



Associations' Legal Standing Before the Court of Justice of the European Union in Actions for Annulment: *Asociația Inițiativa pentru Justiție*

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1. Introduction

In February 2025, the General Court of the European Union concluded a two-

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year dispute between *Asociația Inițiativa pentru Justiție* (hereinafter, “Association”), a Romanian association of public prosecutors, and the European Commission. This dispute stemmed from the repeal of the Cooperation and Verification Mechanism (CMV), which had been previously implemented to monitor the progress of the country towards its accession to the European Union, specifically in the field of justice and the fight against corruption. More specifically, in the case under analysis, the Association sought the annulment of Commission Decision (EU) 2023/1786 that led to the removal of those mechanisms.¹ The General Court, however, found that the Association lacked legal standing under Article 263, paragraph 4 TFEU, resulting in the inadmissibility of the action for annulment.²

This annotation examines the reasons underlying the lack of standing of the Association and the broader legal context within which it occurred. Focusing on two key aspects, i.e. the notions of direct effect and direct concern, central to the General Court’s assessment on admissibility, the paper explores how these concepts interact in determining whether associations may challenge EU acts. This case is of particular relevance as it highlights the procedural limits that associations face when seeking judicial review at EU level, especially when EU-established mechanisms, such as the CVM, are repealed without providing an avenue for those affected, albeit indirectly, by the Decision in question.

In particular, Section 2 outlines the factual and procedural background of the dispute, including the arguments put forth by the Association and the Commission’s responses, and introduces the two central concepts underpinning the admissibility assessment: direct effect and direct concern. Subsequently, while Section 3 provides a detailed examination of direct concern, its doctrinal foundations and the conditions for its recognition, Section 4 assesses on the application of such criterion to the case at issue, in comparison with the previous case law. The following section shifts the analysis to the interplay between direct effect and direct concern, exploring how these notions operate together within the framework of Article 263 TFEU. Lastly, Section 6 assesses on how this

¹ 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.

² On 14 April 2025, *Asociația Inițiativa pentru Justiție* brought an appeal against the order of the General Court (pending appeal, Case C-284/25 P).

background matches up to the legal standing of associations. In light of this examination, the concluding remarks put forward proposals for enhancing associations' room for manoeuvre under Article 263 TFEU.

2. The Background to the Case and the Action of the Association of Romanian Prosecutors

The present case originates from the filing of an action for annulment by the *Asociația Inițiativa pentru Justiție* (hereinafter “the Association”), i.e. an association of Romanian prosecutors, whose purpose is that of ensuring the respect of the rule of law and, in particular, of the rights of prosecutors and of their independence.

In its action, the Association challenged the legality of Decision (EU) 2023/1786, repealing Decision 2006/928/EC,³ which had established - in the context of Romania's accession to the European Union - a cooperation and verification mechanism (hereinafter “CVM”) to assess the country's progress towards the achievement of certain benchmarks provided therein. Noting the persistence of deficiencies in Romania, specifically in the areas of justice and fight against corruption, the Commission considered its accession to the EU contingent upon the establishment of the CVM. When all the benchmarks were successfully met, the latter was to be repealed according to Recital No. 9 of Decision 2006/928/EC. On this ground, in September 2023, the Commission adopted Decision (EU) 2023/1786, deeming Romania to have fulfilled all four benchmarks, through the adoption of comprehensive reforms strengthening the independence and the effectiveness of its judicial system.⁴

On November 28, 2023, the applicant brought an action for annulment under Article 263, paragraph 4, TFEU challenging the legality of Decision (EU) 2023/1786 on three pleas in law. First, it alleged manifest errors of assessment and errors of law in concluding that the benchmarks had been met. Second, it argued that the duty to state reasons provided by Article 296 TFEU, Article 41

³ 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.

⁴ European Commission, *Rule of Law: Commission formally closes the Cooperation and Verification Mechanism for Bulgaria and Romania*, 15 September 2023, available at this [link](#).

of the Charter and the general principles of EU law had been infringed. Lastly, it maintained that the Commission had breached Articles 2 and 49 TEU and the essential procedural requirements, since it did not ask nor did it wait for the Council and the Parliament's agreement on the abolishment of the CVM through the adoption of Decision (EU) 2023/1786.⁵

In its submission, the Commission raised a plea of inadmissibility, questioning the legal standing of the Association to bring an action for annulment under Article 263, paragraph 4, TFEU. In particular, it put forward that neither the applicant, nor any of its members were directly concerned by the challenged act. Alternatively, it argued that the contested act was not regulatory in nature within the meaning of the third limb of Article 263, paragraph 4, TFEU, and that, neither the Association nor the prosecutors within it were individually concerned by it.⁶

In its observations on the plea of inadmissibility, the Association observed that it was a formally recognised organisation representing prosecutors and aiming at safeguarding the independence of the judiciary and the rule of law. On these grounds, it first contended that it had both institutional interests in protecting these values, enshrined in Articles 2 and 19 TEU, and procedural interests in judicial proceedings concerning such values. Secondly, it upheld that it was a privileged interlocutor of the Commission within the CVM context and that, therefore, the repeal of Decision 2006/928/EC, without it being consulted, infringed its legitimate expectations. Thirdly, and most pertaining to this comment, the Association claimed that Decision (EU) 2023/1786 directly concerned it as the repeal of Decision 2006/928/EC affected its work on the protection of the rule of law.⁷ In this regard, the applicant contended that the challenged decision directly affected its members, in their capacity as prosecutors, since the withdrawal of the CVM would increase their risk of being subject to disciplinary proceedings. Furthermore, the Association highlighted that the General Court had previously recognised the direct effect of the

⁵ Action brought on 28 November 2023, Case T-1126/23, *Asociația Inițiativa pentru Justiție/Commission*.

⁶ Order of the General Court of 3 February 2025, Case T-1126/23, *Asociația Inițiativa pentru Justiție/Commission*, para. 19.

⁷ *Ivi*, para. 25.

benchmarks established by Decision 2006/928/EC.⁸ Hence, prosecutors could rely on these benchmarks in order to challenge illegitimate disciplinary actions brought against them. Nonetheless, the repeal of Decision 2006/928/EC, through the adoption of Decision (EU) 2023/1786, entailed the loss of such a possibility for the prosecutors.

The General Court deemed the action inadmissible, concluding that the applicant did not meet any of the conditions established by the case-law in order for an association to have legal standing pursuant to Article 263, paragraph 4, TFEU. Specifically, the Court recalled that an association enjoys legal standing before it in three situations. First, when a legal provision expressly grants it procedural rights; second, when the association represents the interests of its members, who themselves are directly concerned by the contested act; or, lastly, when the interests and negotiating position of the association itself are affected.⁹ In its analysis, the General Court, first excluded that the Association fell within the former type of situations, since it did not ground its action on any legal provision expressly granting it procedural rights. Secondly, it also excluded that the Association came under the third category of situations, since it could not qualify as a privileged interlocutor. Indeed, the fact that the applicant was one of the interlocutors of the Commission within the CVM context was not sufficient to conclude that its negotiating position and interests were affected by the contested Decision.¹⁰

Lastly, the Court focused on the second type of situations in which associations can have legal standing pursuant to Article 263, paragraph 4, TFEU, namely when they represent the interests of their members who themselves are directly concerned by the contested act.¹¹ In this regard, it analysed the two cumulative conditions required by the consistent case-law to meet the “direct concern” criterion, namely that the act shall affect the legal situation of the person concerned and that it shall leave no discretion to those charged with its

⁸ Judgement of the Court of Justice of 18 May 2021, Joined Cases C-83/19, C-127/19, C-195/19, C-291/19, C-355/19 and C-397/19, *Asociația «Forumul Judecătorilor din România»*, para. 249.

⁹ Order of the General Court of 8 May 2019, Case T-330/18, *Carvalho and Others/Parliament and Council*, para. 51.

¹⁰ *Asociația Inițiativa pentru Justiție/Commission*, cited above, paras 25-34.

¹¹ *Ivi*, para. 35.

implementation.¹² The Court considered that Decision (EU) 2023/1786 had to be read in light of the purpose and context of Decision 2006/928, which it repealed. In this respect, it held that this latter provided for a specific obligation only addressed to Romania, namely that of fulfilling the benchmarks, by rapidly taking all appropriate measures and by refraining from adopting any conflicting measure which could jeopardise those benchmarks from being successfully met. Consequently, even though such benchmarks were deemed to be formulated in clear and precise terms so as to have direct effect, they did not confer any specific right on the Association's members. Hence, their legal situation was not directly affected by the contested act and they were not directly concerned by it.¹³

In light of all of these considerations, the General Court concluded that the Association lacked legal standing under Article 263, paragraph 4, TFEU to challenge Decision (EU) 2023/1786 before the Court.¹⁴

This preliminary examination highlights issues arising from the interpretation of the legal standing of associations pursuant to Article 263, paragraph 4, TFEU and, more specifically, relating to the interplay between direct effect and direct concern. The order under analysis, thus, represents an opportunity to further delve into these matters and assess whether the General Court's conclusion is suitable for the peculiar situation in which associations find themselves.

3. The “Direct Concern” Criteria Pursuant to Article 263, paragraph 4, TFEU

Under Article 263, paragraph 4, TFEU, a non-privileged applicant, namely a natural or legal person, can bring an action for annulment against an act which is addressed to it, or which is of direct and individual concern to it, or against a regulatory act which is of direct concern to it and does not entail implementing measures. In the case at hand, the General Court confined its assessment to the requirement of “direct concern”, a prerequisite for the second and the third limbs of Article 263, paragraph 4, TFEU, given that Decision (EU) 2023/1786 is not addressed to the Association, for the purposes of the first situation referred to in

¹² Judgement of the Court of Justice of 12 July 2022, Case C-348/20 P, *Nord Stream 2/Parliament and Council*, para. 43; 28 February 2019, Case C-465/16 P, *Council/Growth Energy and Renewable Fuels Association*, para. 69.

¹³ *Asociația Inițiativa pentru Justiție/Commission*, cited above, para. 41 ff.

¹⁴ *Ivi*, paras 50-53.

that same paragraph.¹⁵ Accordingly, the Court began examining whether the contested act was of direct and individual concern to the applicant, and, more specifically to its members.

As for the notion of “individual concern”, it has long been the object of discussion, starting with the *Plaumann* judgment¹⁶ and the renowned test established therein by the Court.¹⁷ By contrast, the concept of “direct concern” is somewhat unexplored as it is often considered to be an easier criterion to satisfy.¹⁸ This section examines the CJEU’s approach to the concept of “direct concern” under Article 263, paragraph 4, TFEU, by outlining the legal test as developed throughout its case-law and evaluating the implications for an individual’s access to judicial review. This analysis is crucial to understand the General Court’s stance in the case in comment and to evaluate the decision’s value within the broader approach to the notion of direct concern.

According to settled case-law, the notion of direct concern presupposes two cumulative criteria. First, an act must directly affect the legal situation of the person concerned and, second, there must be no discretion left to the persons to whom that measure is addressed and who are responsible for its implementation, this latter being purely automatic and resulting solely from the EU act without the need of further intermediate rules.¹⁹ The first requirement has been broadly interpreted in the case law as meaning that the act is capable of directly producing effects on that person’s legal position. Thus, there should be a direct link between the EU act and the effects on the applicant’s situation.²⁰

As for the second condition, according to which no discretion shall be left to the addressees of the act and to those responsible for its implementation, it implies that the EU measure automatically deploys its effects without the need

¹⁵ *Ivi*, para. 22.

¹⁶ Court of Justice, Judgment of 15 July 1963, Case 25/62, *Plaumann/Commission*.

¹⁷ K. SZEPELAK, *Does the Court of Justice Practice What it Preaches? Upholding the Value of Rule of Law in the Interpretation of Article 263(4) TFEU*, in *European Law Blog*, 2025.

¹⁸ M. RHIMES, *The EU Courts Stand their Ground: Why are the Standing Rules for Direct Actions still so Restrictive?*, in *EJLS*, Vol. 9, No. 1, 2016, p. 103 ff.

¹⁹ *Nord Stream 2/Parliament and Council*, cited above, para. 43.

²⁰ Judgment of the Court of Justice of 29 June 2004, Case C-486/01, *Front National/European Parliament*, paras 34-43. See in this regard A. HINAJEROS, *Judicial Review*, in R. SCHÜTZE, T. TRIDIMAS (eds.), *Oxford Principles of European Union Law: The European Union Legal Order*, Oxford, 2018, p. 887 ff.

of further rules, neither European nor national.²¹ Exceptionally, the Court has sometimes recognised direct concern to provisions leaving a certain degree of discretion for their implementation to national authorities, provided that such a discretion was merely theoretical.²² For instance, in *Microban*, the General Court considered that the prohibition provided by the Commission Decision in question was of direct concern to the applicants, despite the discretion left to the Member States as for the choice of the date from which such a prohibition was to deploy its effects. As no discretion was left in the implementation of such a prohibition, it was considered to be purely «automatic and mandatory».²³

In further judgments, the Court has followed a more nuanced approach, considering that, where an act necessarily required the adoption of implementing measures, the condition of direct concern was satisfied if such an act imposed obligations on the addressee for its implementation and automatically required measures that alter the applicant’s legal position.²⁴ More recently, in the *Nord Stream 2* case, which concerned a directive requiring national transposition measures but also entailing immediate implications for the applicant, the Court argued that, to determine whether a provision was of direct concern, it was necessary to examine its content and purpose in light of objective criteria, irrespectively of whether the provision needed implementing measures. Accordingly, the mere fact that the contested act required implementing measures did not imply, in itself, that the addressees or those responsible for its implementation had a margin of discretion.²⁵ This judgement thus enlightened

²¹ Judgement of the Court of Justice of 23 April 1986, Case 294/83, *Les Verts/European Parliament*, paras 29-31.

²² Judgement of the Court of Justice of 17 January 1985, Case 11/82, *Piraiki-Patraiki/Commission*, paras 6-10. See in this regard also K. LENAERTS, K. GUTMAN, J. T. NOWAK, *EU Procedural Law*, Oxford, 2023.

²³ Judgment of the General Court of 25 October 2011, Case T-262/10, *Microban International Ltd and Microban (Europe) Ltd/Commission*, para. 29.

²⁴ Judgement of General Court of 28 November 2019, Case T-365/16, *Portigon AG/SRB*, para. 68; Judgement of General Court of 7 July 2015, Case T-312/14, *Federcoopesca*, para. 38; Judgement of Court of Justice of 19 October 2000, Joined Cases C-15/98 and C-105/99, *Italy and Sardegna Lines/Commission*, para. 36.

²⁵ *Nord Stream 2/Parliament and Council*, cited above, paras 63-64. This conclusion reversed the findings of the General Court, which had excluded the existence of “direct concern” because the contested provision required implementing measures at national level (Order of the General Court of 20 May 2020, T-526/19, *Nordstream 2/Parliament and Council*, paras 115-116).

the importance of the functional approach adopted by the Court, which was based on the substance of the contested provisions and on their legal effects. A formalistic analysis would have instead led to a categorical denial of directives' ability to directly affect an individual's legal situation.²⁶

It follows from these observations that the case-law of EU courts sometimes provides for a more nuanced reading of the "no discretion left" criterion. Nonetheless, this does not imply neither the complete weakening of the boundaries of such a requirement, nor its abolition, as the second criteria to fulfil the "direct concern" notion always has to be specifically addressed.

4. Asociația Inițiativa pentru Justiție *and the Test of Direct Concern for Associations*

Building on the framework of "direct concern" developed in the previous section, the analysis turns to its application in the context of associations and specifically in the case under analysis. Settled case-law establishes that an association has *locus standi* in three types of situations. First, when a legal provision expressly grants procedural powers to the association; second, when the association represents the interests of its members, who themselves are entitled to bring proceedings; third, where the association is distinguished individually because its own interests or its own negotiating position are affected by the challenged act.²⁷

As highlighted in Section 2, in the case at hand, the General Court excludes that the Association falls within either the first or the third type of situations established by the case-law.²⁸ It then focuses on the analysis of the second category, examining whether the applicant's members, i.e. Romanian prosecutors, would themselves be entitled to bring an action for annulment. Consequently, to assess on the admissibility of the action, the General Court

²⁶ M. HAAG, *Directives, direct concern, and direct access to the CJEU: Case C-348/20 P Nord Stream 2 v Parliament and Council*, in *European Law Blog*, 2022.

²⁷ Order of the General Court of 4 June 2024, Joined Cases T-530/22 to T-533/22, *Magistrats européens pour la démocratie et les libertés (MEDEL)/Council*, para. 40.

²⁸ *Asociația Inițiativa pentru Justiție/Commission*, cited above, paras 25-34.

analysed whether the applicant's members met both the direct and individual concern criteria.²⁹

In this regard, it is relevant to refer to the *MEDEL* Case, concerning an action for annulment brought by four associations of judges.³⁰ In that instance, the applicants intended to challenge the Council's approval of the Polish Recovery and Resilience Plan, deeming it to contain judicial milestones constituting inadequate safeguards for the rule of law. In this relation, scholars argued that direct concern could be established with relative ease, as there was a direct causal link between the decision and its effects on the four associations.³¹ However, the General Court found no such direct link between the challenged act and its effects on the applicants. Indeed, the contested Decision was exclusively addressed to the Member State, which had to achieve the targets and milestones established therein. In this regard, the Court pointed out that, even if the need to adopt certain implementing measures by the Member States did not automatically exclude direct concern, there shall always be a direct link between the contested act and its effects on the applicant. The General Court concluded that, irrespective of the margin of discretion that the Republic of Poland enjoyed for the achievement of the milestones established within the contested Decision, these latter constituted a condition that had to be fulfilled solely by the Member State in question. Hence, they could not be regarded as directly affecting the situation of the applicants' members.³² By denying legal standing to the associations, the order of the General Court raised fundamental questions concerning the test of direct concern for associations, which were further addressed in the case in comment.

In this instance, the General Court preliminarily pointed out that, in order to assess on the effects of Decision (EU) 2023/1786 on Romanian prosecutors, such a decision had to be read in light of the purpose and content of Decision 2006/928/EC which it was repealing, as well as of the legal and factual context in which this latter had been adopted. In this sense, the former could be

²⁹ *Ivi*, para. 41 ff.

³⁰ *Magistrats européens pour la démocratie et les libertés (MEDEL)/Council*, cited above.

³¹ T. BOEKSTEIN, *Here We Stand: Initial thoughts on the standing of the four European judges' associations in their action against the decision to unblock funds to Poland*, in *VBlog*, 7 September 2022.

³² *Magistrats européens pour la démocratie et les libertés (MEDEL)/Council*, cited above, para. 70 ff.

recognised as directly concerning the members of the applicant for the purposes of an action under Article 263, paragraph 4, TFEU, only insofar as the provisions of Decision 2006/928/EC also directly affected such members. Starting from this preliminary observation, the General Court applied the same approach it developed in the *MEDEL* Case.³³ The Court first recalled that Decision 2006/928/EC had been adopted in the context of Romania's accession to the European Union, with the objective of ensuring the respect for the rule of law, particularly by remedying deficiencies in the areas of justice and anticorruption efforts. Once the benchmarks established therein had been successfully fulfilled, the Decision had to be repealed.

As for the provisions of Decision 2006/928/EC, by referring to its previous case *Asociația "Forumul Judecătorilor din România"*, the General Court confirmed that the benchmarks enjoyed a direct effect, since they were formulated in clear and precise terms.³⁴ Additionally, the Court noted that the Decision was solely addressed to Romania, on which it imposed specific obligations: taking all appropriate measures and refraining from the adoption of those which could jeopardise the achievement of the benchmarks; report annually to the Commission and comply with the requirements and recommendations laid out in the subsequent Commission's reports.³⁵

While recalling the direct effect of the benchmarks, the General Court maintained that such a characteristic did not automatically imply the right for prosecutors to bring an action for annulment pursuant to Article 263, paragraph 4, TFEU. In this context, it highlighted that, while the recognition of direct effect allowed individuals to bring proceedings before national courts against national measures conflicting with such benchmarks, it did not indicate that those same individuals could challenge the validity of the measure before the EU Courts. Thus, despite having direct effect, those benchmarks did not directly concern the members of the Association for the purposes of bringing an action for annulment under Article 263, paragraph 4, TFEU.³⁶

³³ *Asociația Inițiativa pentru Justiție/Commission*, cited above, para. 43.

³⁴ *Asociația «Forumul Judecătorilor din România»*, cited above, para. 249.

³⁵ *Asociația Inițiativa pentru Justiție/Commission*, cited above, paras 44-52.

³⁶ *Ivi*, paras 53-57.

Additionally, the Court upheld that there were no provisions within Decision 2006/928/EC expressly granting a right to prosecutors, as all of the Articles therein solely concerned the relation between the European Union and Romania. Since none of the provisions within the repealed Decision produced effects *vis-à-vis* individuals, the legal situation of Romanian prosecutors was not affected; and, as such, the latter were not directly concerned by the contested Decision for the purposes of bringing an action pursuant to Article 263, paragraph 4, TFEU.³⁷

Lastly, and departing from the more nuanced approach adopted in the *Nord Stream 2* case discussed above, the Court found that direct concern could not be established. More specifically, it maintained that this latter required national authorities responsible for the implementation to be left with no discretion. Nonetheless, since Romania retained a certain degree of autonomy in the adoption of national measures to address the benchmarks, direct concern could not be recognised in regard to the Association’s members. Hence, these latter could not enjoy legal standing pursuant to Article 263, paragraph 4, TFEU.³⁸

According to the Court’s reasoning, holding otherwise and allowing for a broader interpretation would extend the notion of direct concern far beyond its intended scope. Such a broad approach would render all EU rules on which individuals may rely upon before national courts hypothetically subject to judicial review pursuant to Article 263 TFEU.³⁹

It is worth noting that, even if direct concern had to be successfully assessed, that alone would have not been sufficient to grant legal standing to the association or, even, to its members. Indeed, the second limb of paragraph 4 also required the fulfilment of the “individual concern” criterion, whereas, under the third limb, the challenged provision had to be a regulatory act entailing implementing measures.⁴⁰ None of these conditions was however met by the challenged act.

The General Court’s narrow view in confirming that the provisions of the CVM enjoyed direct effect while excluding the direct conferral of rights to the

³⁷ *Ivi*, paras 60-63.

³⁸ *Ivi*, paras 63-64.

³⁹ *Ivi*, para. 62.

⁴⁰ *Ivi*, paras 71-72.

prosecutors reveals a potential disconnection between the notions of direct effect and direct concern.⁴¹

5. *The Interplay between Direct Effect and Direct Concern*

As analysed in the previous section, the General Court concluded that the provisions challenged by the applicant did not directly concern the latter, despite the recognition of their direct effect in previous judgments. Accordingly, such an assertion excludes that the mere recognition of direct effect automatically implies that of direct concern.

At first glance, this conclusion might seem contradictory in nature, as the traditional definition of direct effect is that of the ability of a provision to grant a right to individuals so that they are entitled to challenge the non-compliance with an EU act before national courts.⁴² In this respect, this section aims at understanding whether such a conclusion is contradictory or whether it is an automatic consequence of the different meanings and purposes of the concept of direct effect and direct concern.

First, in order to understand the scope and meaning of the General Court's conclusion, it is necessary to give an overall definition of the notions of direct concern and of direct effect, highlighting their similarities and differences. As for the direct concern criterion, which has already been thoroughly analysed in this paper, it suffices to recall that a provision is of a direct concern to an individual who wants to institute proceedings under Article 263, paragraph 4, TFEU, when it directly affects its legal situation and leaves no discretion as to its implementation, which shall be automatic and result from EU rules without the application of other intermediate rules.⁴³ On the other hand, the concept of direct effect traditionally reflects the idea that the EU law provision can be directly invoked at national level by individuals, in order to challenge conflicting national law. As first affirmed in the *Van Gend en Loos* judgment, a provision which is sufficiently clear, precise and unconditional and which does not require any

⁴¹ G. FRANSONI, *When Direct Effect Meets Direct Concern: Understanding Admissibility ex Article 263(4) TFEU in Case T-1126/23*, in *ELL*, 2025.

⁴² K. LENAERTS, K. GUTMAN, J. T. NOWAK, *op. cit.*

⁴³ *Nord Stream 2/Parliament and Council*, cited above, para. 43.

additional implementation to deploy its effects, produces direct effects and grants individuals' rights which national courts must protect.⁴⁴ In this light, the main distinction between direct effect and direct concern pertains to the different purposes they serve. On the one hand, the former indicates the possibility for an individual to invoke the EU provision before national courts in order to challenge the legitimacy of a national measure conflicting with such a provision.⁴⁵ On the other hand, direct concern is one of the conditions which is required for an individual to bring an action for annulment against an EU act under of Article 263, paragraph 4, TFEU. Consequently, even though both criteria pertain to the legal standing of individuals, they operate on two different levels: the first nationally, the second at the European level.

For the purposes of this analysis, particular attention shall be given to the different meaning of the notion of direct effect, both in its objective and its subjective perspective.⁴⁶ The former refers to those cases where the EU act at stake does not grant a right to an individual, but only imposes an obligation on a Member State. In these instances, despite the absence of a subjective right conferred upon the individuals, those affected by a Member State's non-compliance with the relevant EU law shall be able to invoke that supranational obligation imposed upon the Member State before national courts. The relevant EU provision thus becomes itself a parameter of the legitimacy of the conflicting national law, which can be invoked before national courts in order to obtain a compliant interpretation or the disapplication of such national provision. In this sense, the intention to grant rights is not a condition of direct effect but a consequence: the individual does not enjoy a position directly deriving from the European provision, but it invokes the obligation established therein imposed on the State in order to obtain the corresponding interest deriving from the setting

⁴⁴ Judgment of the Court of Justice of 5 February 1963, Case 26/62, *Van Gend en Loos*, para. 13; 19 July 1982, Case 8/81, *Becker*, para. 59.

⁴⁵ In light of the primacy principle, in case of a national measure conflicting with an EU provision of direct effect, the national courts shall provide a compliant interpretation or, where this is not possible, they shall set aside the conflicting internal measure. With regard to the recognition of direct effect to directives see Judgment of the Court of Justice of 5 April 1979, Case 148/78, *Ratti*, paras 20-23; 4 December 1974, Case 41/74, *Van Duyn*, para. 12.

⁴⁶ G. FRANSONI, *op. cit.* See in this regard also: S. PRECHAL, *Does direct effect still matter?*, in *CMLR*, Vol. 37, No. 5, 2000, p. 1047 ff.

aside of the conflicting national law.⁴⁷ On the other hand, the concept of “subjective direct effect” refers to the ability of a provision of EU law to confer rights on individuals, that they may enforce before national courts. Differently from the objective approach, under this narrower conception, the European provision enjoying direct effect takes the place of the conflicting national law; it directly affects the legal position of an individual, thus resulting in the regulation of a field which was previously governed by a «conflicting national norm».⁴⁸

This distinction, between objective and subjective direct effect, is strictly related to that between vertical and horizontal, the former indicating the possibility for an individual to invoke a European provision against the State because of its non-compliance with such a provision, the latter allowing for the enforceability of the supranational measure in disputes between private parties. In this regard, European provisions that solely have an objective direct effect can only be invoked in vertical disputes; on the contrary, those enjoying a subjective direct effect can be both invoked in vertical and horizontal proceedings.

Lastly, it is crucial to underline the connection between the two conceptualisations of direct effect with the principles of effectiveness and of effective judicial protection. On the one hand, under the objective perspective, direct effect serves the purpose of ensuring the compliance with and the fair enforcement of European provisions, i.e. their effectiveness. In this regard, individuals become actors of the process of enforcement of EU law, and are called to ensure the compliance of the State with it. On the other hand, the subjective conception requires Member States to establish an internal legal order which provides the necessary remedies to safeguard the rights of individuals stemming directly from EU law, i.e. the effective judicial protection of such rights.⁴⁹

All of the above considerations are of extreme importance for the purposes of the analysis of the case in comment, whereby the General Court recognised the direct effect of certain provisions while excluding that the applicants were

⁴⁷ With regard to “objective direct effect”, see W. VAN GERVEN, *Of Rights, Remedies and Procedures*, in *CMLR*, Vol. 37, No. 3, 2000, p. 501 ff.; D. GALLO, *Effetto diretto del diritto dell’Unione europea e disapplicazione, oggi*, in *OSF*, No. 3, 2019, p. 1 ff.

⁴⁸ D. GALLO, *Direct effect in EU Law*, Oxford, 2025; D. GALLO, *Effetto diretto del diritto dell’Unione europea e disapplicazione, oggi*, cit.

⁴⁹ D. GALLO, *Direct effect in EU Law*, cit.

directly concerned by those same provisions. Consequently, to understand the interplay between the notions of direct effect and direct concern in this case, it is necessary to assess on the specific type of direct effect that the EU provision at stake enjoys.

Decisions addressed to a Member State are to be considered binding in their entirety. However, where they only provide obligations incumbent upon the State, without granting any individual rights, and where the provisions are sufficiently clear, precise and unconditional so as to enjoy a direct effect, that effect must be understood in objective terms. In such circumstances, the provisions can be invoked by individuals only against the Member State in the event of non-compliance. Consequently, a decision presenting these characteristics can never enjoy a horizontal direct effect⁵⁰. This is the situation of the challenged act, Decision (EU) 2023/1786, in the case under analysis⁵¹, and of Decision 2006/928/EC, which, as highlighted by the General Court, was addressed solely to Romania and was considered binding in its entirety with the benchmarks established therein enjoying direct effect⁵². In light of the distinction presented above, the direct effect of these provisions could only be objective in nature, as they did not directly confer any rights to individuals, but can be relied upon before national courts to challenge the failure to comply of the Member State.⁵³ Consequently, as alluded by the General Court, the provisions of Decision 2006/928/EC could only be recognised as having vertical direct effect, allowing individuals to invoke them solely in disputes against the States.⁵⁴

These considerations show the connection between direct effect and direct concern, whereby a supranational provision not directly conferring a right to individuals does not directly affect their legal situation, a circumstance which

⁵⁰ Judgment of the Court of Justice of 10 November 1992, Case C-156/91, *Hansa Fleisch*, paras 19-20.

⁵¹ *Asociația Inițiativa pentru Justiție/Commission*, cited above, paras 50-52.

⁵² *Asociația «Forumul Judecătorilor din România»*, cited above, para. 249.

⁵³ *Asociația Inițiativa pentru Justiție/Commission*, cited above, paras 74-82.

⁵⁴ *Ivi*, paras 81-86. In its decision, the General Court, considered that «judicial review of compliance with the European Union legal order is, in any event, ensured [...] not only by the Court of Justice but also by the courts and tribunals of the Member States». Thereby justifying a stringent threshold to prove legal standing before EU courts as the national courts also contribute to the complete system of legal remedies and procedures ensuring judicial review of the legality of EU acts.

would fulfil the second requirement of the “direct concern” criterion. It follows that those European provisions which solely enjoy an objective direct effect, and therefore only allow individuals to invoke them in vertical disputes, do not directly affect the legal situation of said individuals and, thus, cannot be of direct concern to them within the meaning of Article 263, paragraph 4, TFEU.

In this context, the conclusion reached by the General Court does not seem to be in contradiction in respect to the notions of direct effect and direct concern. However, the fact that the former does not necessarily imply the latter can only hold true as long as the European provision is solely addressed to the Member States and only imposes obligations on them, without directly granting rights upon individuals. Nevertheless, where the EU act at stake has also a subjective direct effect, i.e. it directly confers rights to individuals, thus directly affecting their legal situation. In such circumstances, the recognition of direct effect necessarily implies that the contested act is of direct concern to the applicant since the act confers an individual right on them.

This distinction also finds its justification for reasons of opportunity and expediency: it would be unreasonable to allow a single individual to challenge the whole legality of an EU act which does not even grant him a right. By contrast, as the effectiveness of EU law is of fundamental importance, recognising the distinction between objective and subjective direct effect serves to allow individuals to challenge national measures conflicting with EU law provisions that directly affect their legal position, even when these latter do not directly confer rights on them.

6. Associations Instituting Proceedings under the second Limb of Article 263, paragraph 4, TFEU

This entire conclusion may however appear difficult to reconcile with the legal context in which associations operate. One thing is the risk connected to allowing one single individual to challenge the validity of an EU act which does not even confer on him a right; another, is the practical and functional implications that could derive from allowing an association to challenge under Article 263, paragraph 4, TFEU a supranational provision which indirectly affects all of its members.

In this regard, as previously recalled, associations have the right to challenge an EU act under Article 263, paragraph 4, TFEU in three instances, namely when there is a legal provision expressly granting procedural powers to such an association; when the association represents the interests of individuals who themselves would have legal standing before the Court; or, where the association is distinguished individually because its own interests or its own negotiating position are affected by the challenged act⁵⁵. In the assessment of the legal standing of associations, where no legal provision within the contested act expressly grants procedural powers to the association, the EU courts have to move to the analysis of the other two possible instances. However, as it is apparent from the case in comment, in doing so, EU courts tend to focus their analysis on the legal standing of each member of the association, to assess whether they would be individually entitled to institute proceedings pursuant to Article 263, paragraph 4, TFEU. Nonetheless, this assessment, in circumstances such as those at issue in the case under examination, whereby the contested measure only has an objective direct effect, leads to an *impasse*: none of the members could be considered directly concerned by the EU act, as the latter does not directly grant them individual rights and, thus, does not directly affect their legal situation. Although the Court justified its decision on the ground that national courts form part of the complete system of legal remedies and procedures, and that, as a result, the Association retains the possibility to challenge the legality of any act or measure implementing EU law before national courts,⁵⁶ such an outcome could, in practice, undermine the principles of effective judicial review and of the rule of law. Furthermore, it could risk leading to a judicial protection gap at EU level, as neither the members of the association, nor the Association itself are entitled to bring an action for annulment against an EU act of objective direct effect, thereby placing that act effectively beyond the reach of direct scrutiny at the EU level.

In this regard, we share the concern that, in such circumstances, it would be problematic to allow a single individual whose rights are not affected, to challenge an EU act, thereby making the assessment on its validity and legality

⁵⁵ *Magistrats européens pour la démocratie et les libertés (MEDEL)/Council*, cited above, para. 40.

⁵⁶ *Asociația Inițiativa pentru Justiție/Commission*, cited above, paras 74-82.

dependent solely on that claim. Nonetheless, this consideration does not apply equally to associations where the contested act, despite not conferring an individual right on each member, may nevertheless influence their legal position both individually and by virtue of their membership in the association. As such, excluding the legal standing of the members of an association in such circumstances could undermine the very nature and essential functions of associations, which are created to represent collective interests, transcending the individual rights of every single member, and to safeguard the system such members belong to. Depriving associations from the possibility to bring an action for annulment against an EU act which indirectly affects all of its members, and which has consequences for the framework in which its members operate, would, in practice, render the pursuit of its objectives impossible.

Although, as demonstrated above, the limitation to the principles of effective judicial protection and of the rule of law can be justified with regard to single individuals, the same cannot be said in respect of associations. In order to avoid such an *impasse*, we suggest shifting the focus to the third set of circumstances in which associations could bring proceedings, namely when they are individually distinguished because their own interests or their negotiating position are affected by the contested act. Indeed, there is a lack of case-law on the definition and the establishment of the requirements necessary to fall within this latter category. Indeed, in the present case, the General Court excluded that the Association was a privileged interlocutor, for the purposes of falling within this latter category of entitled applicants.⁵⁷ Nonetheless, it did not further delve into the explanation of what would be deemed sufficient for a professional association of prosecutors to claim such a position.⁵⁸

Furthermore, it is worth pointing out that in a situation such as that at issue in the case under analysis, even where the direct concern criterion was to be recognised, no action could have been lodged under Article 263, paragraph 4, TFEU. Indeed, the second limb of such a provision also requires the applicant to be individually concerned by the contested act, i.e. this latter shall affect them by

⁵⁷ Order of the General Court of 3 February 2025, Case T-1126/23, *Asociația Inițiativă pentru Justiție/Commission*, paras 29-30.

⁵⁸A. MARINI, *Different Role, Same Criteria: The Locus Standi Regime for Professional Judicial Association*, in *Review of European Litigation*, No. 1, 2025, p. 1 ff.

reason of certain attributes peculiar to them or of circumstances in which they are differentiated from all other persons and, by virtue of these factors, distinguishes them individually just as in the case of the person addressed by such a decision.⁵⁹ In this regard, the mere fact of belonging to a specific group is not sufficient in itself, as it is also necessary to be members of a limited class of persons, i.e. the applicant shall be at least identifiable by the author of the act when adopting this latter, on the basis of sufficiently exact information which that author was in a position to obtain; and, it shall have specific characteristics in comparison with other persons to whom that act is intended to apply.⁶⁰ In our view, the Association instituting the proceedings in the case under analysis does not appear to meet the requirements laid down by the case law of the Court with regard to the “individual concern” criterion.

Moreover, since Decision (EU) 2023/1786 and Decision 2006/928/EC qualify as regulatory act, they could also be challenged under the third limb of Article 263, paragraph 4, TFEU, but only in so far as they do not entail implementing measures. As previously highlighted in Section 3, the mere existence of a margin of discretion for national authorities to implement an EU act does not automatically exclude the possibility to meet the “direct concern” criterion. Nonetheless, this is not the situation envisaged by Decision 2006/928/EC, in light of which Decision (EU) 2023/1786 shall be read, since it expressly asks the accessing countries to fulfil certain benchmarks and report periodically about it, without further specifying. By adopting the approach developed in the *MEDEL* case, the General Court excluded that the provisions at stake could be regarded as «leaving no discretion to the national authorities» for the purposes of recognising direct concern under Article 263 TFEU. As such, the same conclusion shall be reached with regard to the third limb of paragraph 4 of that same provision. Indeed, we believe that the discretion left to the Member States for the fulfilment of the benchmarks established within the acts at stake is far too wide to consider that the decisions at stake «do not entail implementing measures» for the purposes of Article 263, paragraph 4, third limb of the TFEU. Hence, even if the contested act was to be considered of direct concern to the

⁵⁹ *Plaumann*, cited above, para. 107.

⁶⁰ Judgment of the Court of Justice of 18 December 2025, Case C-731/23 P, *Nicoventures Trading and Others/Commission*, paras 57-60.

applicant, still, it would not be possible to institute proceedings under neither the second nor the third limb of Article 263, paragraph 4, TFEU.

This analysis suggests that the conditions established in the case-law on the standing of associations warrant reconsideration. Shifting the focus to the position represented by the association and on its specific functions and responsibilities, and, accordingly, easing the conditions otherwise imposed on individual applicants, would, in our view, allow such associations to institute proceedings under Article 263, paragraph 4, TFEU. This would fill the judicial protection gap, resulting from the existing case-law and would help prevent breaches of the principles of effective judicial review and of the rule of law. In light of the above considerations, we suggest the adoption of a more lenient approach, easing the conditions for the admissibility of annulment actions lodged by associations with the purpose of avoiding judicial protection gaps, and thus upholding the principle of effective judicial protection and the rule of law.

7. Concluding Remarks

This annotation has provided the analytical basis necessary to understand how associations may participate in the Union's system of legal review and the limits for such participation. While the action for annulment was deemed inadmissible before the merits could be addressed, the ability of individual members of the association, or of the association itself, to engage with the Union's judicial mechanisms remains a crucial aspect of the Union's constitutional framework.

It is for this reason that, notwithstanding the well-reasoned conclusion of the General Court, some elements merit closer scrutiny, both in terms of precision and in terms of context and substance. As the Court affirmed, it is clear that direct effect does not automatically confer direct concern and that treating it as such would extend direct concern far beyond its intended scope. It is important to note that this conclusion applies only in relation to objective direct effect, as discussed in Section 5 of this annotation. Whereas subjective direct effect arises when a provision of EU law directly confers rights upon individuals, objective direct effect concerns the obligations imposed on Member States. This distinction, although implicit in the General Court's reasoning, was not expressly articulated and perhaps greater clarity would have been desirable. This also begs the

question of whether the outcome might have differed if the Association demonstrated that its members' legal situation had been, even indirectly, affected by the repeal of the CVM. Establishing such an impact could have altered the admissibility analysis and may have had implications for future claims brought by other associations. Ultimately, further case law will be necessary to understand more accurately the precise doctrinal limits of direct effect in this specific context.

A second critique can be raised on the strict nature of the process and requirements to bring proceedings, which sees an association having to go through extensive legal obstacles and two layers of discretion: Article 263 TFEU, and the case law around associations' actions for annulment procedures. While the easing of admissibility was deemed unacceptable by the General Court, the method through which it was denied may reflect a degree of rigidity. This outcome, however, is not attributable to any shortcoming on the part of the General Court, as it was applying the unequivocal provisions and established interpretations governing the admissibility of actions brought by associations. While the legal, procedural, and substantive elements of the case are relatively clear, the broader context warrants a more sensitive and nuanced consideration. In a case such as the one under analysis, whereby an association considered the situation in its Member State to become inadequate subsequent to the repeal of an EU act, there shall be more consideration for the possibility to access judicial review at the European level. The *impasse* in which the association found itself, namely that of being able to bring an action only at national level, calls for a more flexible approach to admissibility.

This is not a process that the General Court is tasked for, and for such long-term revision, which we urge, a proper procedure should be started by bodies such as the Parliament's Committee on Legal Affairs in order to mitigate the risk of missing important input from individuals and groups concerned in specific fields or affairs in the future – especially when it comes to associations that represent members of the political life of a nation, such as lawyers, public officials and similar.

ABSTRACT (ITA)

La presente nota analizza l'ordinanza del Tribunale nella causa *Asociația Inițiativa pentru Justiție/Commissione* (causa T-1126/23), con cui è stato dichiarato irricevibile un ricorso di annullamento proposto da un'associazione rumena di pubblici ministeri contro la decisione (UE) 2023/1786 della Commissione che abroga il meccanismo di cooperazione e verifica (CVM). Il caso solleva questioni significative relative alla legittimazione delle associazioni ai sensi dell'articolo 263, paragrafo 4, TFUE e al rapporto tra i concetti di effetto diretto e di interesse diretto. Lo scritto esamina la valutazione di ammissibilità del Tribunale e la sua conclusione secondo cui l'abrogazione del CVM non riguardava direttamente né l'associazione né i suoi membri, nonostante il precedente riconoscimento dell'effetto diretto dei parametri di riferimento del CVM. L'analisi approfondisce la distinzione operata dal Tribunale tra effetto diretto e interesse diretto, sostenendo che le disposizioni che producono solo effetti giuridici oggettivi – imponendo obblighi esclusivamente agli Stati membri – non incidono automaticamente sulla situazione giuridica dei singoli ai sensi dell'articolo 263 TFUE. L'annotazione evidenzia inoltre il rischio di un vuoto di tutela giurisdizionale per le associazioni che rappresentano interessi collettivi indirettamente interessati dagli atti dell'UE. Conclude suggerendo un criterio più flessibile per valutare la legittimazione delle associazioni, che potrebbe rafforzare l'effettiva tutela giurisdizionale e meglio garantire lo Stato di diritto nell'ordinamento giuridico dell'UE.

ABSTRACT (ENG)

This annotation analyses the General Court's order in *Asociația Inițiativa pentru Justiție/Commissione* (Case T-1126/23), which declared inadmissible an action for annulment brought by a Romanian association of public prosecutors against Commission Decision (EU) 2023/1786 repealing the Cooperation and Verification Mechanism (CVM). The case raises significant issues concerning associations' legal standing under Article 263, paragraph 4, TFEU and the relationship between the notions of direct effect and direct concern. The annotation examines the General Court's admissibility assessment and its

conclusion that the repeal of the CVM did not directly concern neither the association nor its members, despite the prior recognition of direct effect of the CVM benchmarks. The analysis elaborates on the General Court's distinction between direct effect and direct concern, arguing that provisions producing only objective legal effects – by imposing obligations solely on Member States – do not automatically affect the legal situation of individuals within the meaning of Article 263 TFEU. The annotation further highlights the risk of a judicial protection gap for associations representing collective interests that are indirectly affected by EU acts. It concludes by suggesting a more flexible test to assess on associations' legal standing, which could strengthen effective judicial protection and better uphold the rule of law within the EU legal order.