EUROPEAN COMMISSION
DIRECTORATE-GENERAL FOR COMPETITION

PRACTICAL GUIDANCE ([1])

IN CONNECTION WITH THE INTERNAL REVIEW MECHANISM

FOLLOWING THE AARHUS CONVENTION COMPLIANCE COMMITTEE FINDINGS IN CASE ACCC/C/2015/128

1. CONTEXT

On 12 May 2025, the European Commission adopted amendments to its State aid rules (i.e., the State aid Implementing Regulation ([2])(EC) No 794/2004 ('Implementing Regulation') and the State aid Best Practices Code ([3]) ('BPC')) to provide **public access to justice in environmental matters in relation to EU State aid decisions**. For that purpose, the Commission set up a mechanism by which non-governmental organisations ('NGOs') may request a Commission review of certain State aid decisions to establish whether they contravene Union environmental law. That new review mechanism addresses the Aarhus Convention Compliance Committee's ('ACCC') findings in case ACCC/C/2015/128.

The amended rules enable **eligible NGOs** ([4]) to request an internal review of certain State aid decisions to assess compliance with Union environmental law ([5]).

([1]) *DISCLAIMER: This is a working document drafted by the services of the European Commission for information purposes only and it does not express an official position of the Commission. This does not create or alter any right or obligation as compared to those laid down in the Treaty on the Functioning of the European Union, the State aid Procedural Regulation and the Implementing Regulation as interpreted by the Union Courts. The views set out in this document are without prejudice to the Commission State aid regulations, guidelines and frameworks as well as the interpretation of the notion of State aid by the Union Courts; the primary reference for interpreting the Treaty is always the case–law of the Union Courts.*

([2]) OJ L, 2025/905, 13.6.2025.

([3]) OJ C, 2025/2810, 13.6.2025.

([4]) See paragraph 78 of the BPC.

([5]) See paragraph 77 of the BPC.

Commission européenne/Europese Commissie, 1049 Bruxelles/Brussel, BELGIQUE/BELGIË – Tel. +32 22991111
Office: MADO 02/P026 – Tel. direct line +32 229-94282

In particular, the new rules lay down the acts that may be subject to review requests. They are **final State aid decisions closing the formal investigation procedure** initiated under Article 108(2) of the Treaty on the Functioning of the EU ('TFEU'), by finding that a measure is compatible with the internal market ('positive decision') or can be compatible under conditions ('conditional decision') ([6]).

Aarhus review requests can be requested for **all grounds of compatibility** under the TFEU for authorising State aid, **except for** final decisions adopted under Article 107(2) TFEU ('aid having a social character, granted to individual consumers' and 'aid to make good the damage caused by natural disasters or exceptional occurrences'), and Article 107(3)(b) TFEU, insofar as it concerns aid 'to remedy a serious disturbance in the economy of a Member State' ([7]).

Moreover, eligible NGOs must show that the **activity** subject to State aid or **any of the aspects of the State aid measure approved** by the Commission decision, that are **inseparable from the object of the aid** ('indissolubly linked'), are in breach of a specific rule or specific rules of Union environmental law ([8]). Furthermore, **Member States** are required to confirm compliance of their notified aid measure with EU environmental law, where applicable ([9]).

With this practical guidance, the Commission provides **examples** of EU Courts' judgments clarifying the notion of 'indissoluble link' ([10]) in the State aid field.

This is meant as an **informative, non-exhaustive overview document** supporting, in particular, eligible NGOs and Member State authorities with the preparation of their internal review requests or notification procedures.

2. EXAMPLES: RELEVANT CASE-LAW OF THE EU COURTS ON ACTIVITIES OR ASPECTS OF THE STATE AID MEASURE INDISSOLUBLY LINKED TO THE OBJECT OF THE AID MEASURE

2.1 General remarks

According to the EU Courts' case law, the Commission's competence in State aid control may be extended to other areas of law only exceptionally.

([6]) See paragraph 82 of the BPC.

([7]) See paragraph 82 of the BPC.

([8]) Paragraph 77 of the BPC states that: '*Any non-governmental organisation that meets the criteria set out in paragraph 78 will be eligible to request an internal review with the Commission in respect of the State aid decisions listed in paragraph 82, on the grounds that the activity subject to State aid or any of the aspects of the State aid measure approved by that decision that are indissolubly linked to the object of the aid, may contravene Union environmental law, as in Article 2(1), point (f) of Regulation (EC) No 1367/2006 of the European Parliament and of the Council.*'

([9]) Point 6.8 Annex I Part I of the Implementing Regulation states that '*For aid notified under Articles 107(3), point (a), first part of point (b) (aid to promote the execution of an important project of common European interest), points (c), (d) and (e) of the Treaty, Article 93 of the Treaty and Article 106(2) of the Treaty, please confirm that, neither the aided activity, nor any aspects of the notified State aid measure that are indissolubly linked to the object of the aid are breaching Union environmental law*

([10]) The terms 'indissoluble', 'intrinsic', 'inextricable' are used interchangeably by the EU Courts and throughout this document.

The Commission is required to consider a breach of another EU rule within the State aid assessment procedure based on Article 108 TFEU, thereby evaluating the compatibility of the aid as a whole, only in the presence of an 'indissoluble link' between those aspects of the aid measure and the object of the aid ([11]) Conversely, EU Courts and, respectively, national courts are competent where such a link cannot be established ([12]) . Specifically, while the assessment of the compatibility of aid measures with the internal market falls within the exclusive competence of the Commission, subject to review by the EU Courts, it is for the national courts to ensure that the rights of individuals are safeguarded where the obligation pursuant to Article 108(3) TFEU to give prior notification of State aid to the Commission and await the latter's decision has been infringed ([13]) . In addition, national courts have competence to assess whether the arrangements of an aid measure comply with Treaty provisions which have direct effect, other than those relating to State aid, only if those arrangements can be evaluated separately and thus, although forming part of the aid measure in question, are not necessary for the attainment of its objective or for its functioning ([14]).

2.2 The notion of 'indissoluble link'

The 'indissolubly linked' test was first formulated by the EU Courts in *Ianelli & Volpi* and has been repeatedly confirmed and clarified since, most recently in Case C-59/23 *Paks II* ([15]).

Case 74/76 – *Ianelli & Volpi* ([16]):

In its judgment of 22 March 1977 on a preliminary ruling request from an Italian court, the Court had to clarify whether a national court may decide on a national measure that allegedly amounted to State aid and may have breached other EU rules with direct effect, such as the prohibition of quantitative restrictions and measures having equivalent effect.

The Court had to rule on the division of competences between national courts and the Commission as regards State aid and a possible infringement of (now) Articles 34 TFEU (ex-Article 30 EEC) and (now) Article 110 TFEU (ex-Article 95 EEC) on discriminatory taxation. The matter arose in connection with a contractual relationship between a vendor and a purchaser of wallpaper, concerning charges on imported goods imposed by Italian law, used to co-finance subsidies granted by a public body to Italian undertakings in the paper sector.

([11]) *Ex multis* judgment of 22 March 1977 in Case 74/76 *Ianelli & Volpi*, ECLI:EU:C:1977:51, paragraph 14.

([12]) Judgments of 2 May 2019, C-598/17, *A-Fonds*, ECLI:EU:C:2019:352, paragraphs 46 to 48; and Judgment of 7 March 2024 in Case C-558/22 *Fallimento Esperia and GSE*, ECLI:EU:C:2024:209, paragraph 22([13]) Judgment of 8 December 2011 in Case C-275/10 *Residex Capital IV*, EU:C:2011:814, paragraph 27.

([13]) Judgment of 8 December 2011 in Case C-275/10 *Residex Capital IV*, EU:C:2011:814, paragraph 27.

([14]) Judgments of 22 March 1977 in Case 74/76 *Iannelli & Volpi*, EU:C:1977:51, paragraph 14, and of 23 April 2002, in Case C-234/99, *Nygård*, EU:C:2002:244, paragraph 57.

([15]) Judgment of 11 September 2025, in Case C-59/23 P *Paks II*, ECLI:EU:C:2025:686, paragraphs 53-55.

([16]) Judgment of 22 March 1977 in Case 74/76 *Ianelli & Volpi*, ECLI:EU:C:1977:51.

First, the Court distinguished between the rules on State aid control and those on the enforcement of other EU rules with direct effect. It noted that it is the Commission's responsibility, and not that of national courts, to assess the compatibility of an aid measure with the common market through the procedure set out in (now) Article 108 TFEU (ex-Article 93 EEC), subject to review by the Court. ([17]) By contrast, national courts may apply other EU rules with direct effect.

In particular, the Court noted that to determine jurisdiction, the notion of 'indissolubly linked' was key:

'*Those **aspects of aid** which contravene specific provisions of the Treaty other than Articles 92 and 93 [now Articles 107 and 108 TFEU] may be so **indissolubly linked** to the **object of the aid** that it is impossible to **evaluate them separately** so that their effect on the compatibility or incompatibility of the aid viewed as a whole must therefore of necessity be determined in the light of the procedure prescribed in Article 93*.

*Nevertheless, the position is different if it **is possible when a system of aid is being analysed to separate those conditions or factors** which, even though they form part of this system, may be regarded as not being **necessary for the attainment of its object or for its proper functioning***.

*In the latter case there are no **reasons based on the division of powers** under Articles [107 and 108 TFEU] which permit the conclusion to be drawn that, if other provisions of the Treaty which have direct effect are infringed, those provisions may not be invoked before national courts simply because the factor in question is **an aspect of aid***'. ([18])

In addition, the Court flagged that: *'The fact that the inevitable consequence of the aid itself is often protection and therefore some partitioning of the market in question, as far as concerns the production of undertakings which do not derive any benefit from it, cannot imply that the aid produces restrictive effects which exceed what is necessary to enable it to attain the objectives permitted by the Treaty'.* ([19])

Therefore, a distinction must be drawn between **aspects that are inextricably linked** to the object of the aid and ('severable') **aspects that are not**. For this, one must determine if the **conditions or factors** in question are **necessary for the attainment of the object of the aid or for its proper functioning**.

Thus, the Commission may be required to consider infringements of other provisions of EU law within the procedure for reviewing State aid under Article 108 TFEU only in a specific situation. The Commission may not use the procedure in

([17]) Judgment of 22 March 1977 in Case 74/76 *Ianelli & Volpi,* ECLI:EU:C:1977:51, paragraph 12.

([18]) Judgment of 22 March 1977 in Case 74/76 *Ianelli & Volpi,* ECLI:EU:C:1977:51, paragraph 14.

([19]) Judgment of 22 March 1977 in Case 74/76 *Ianelli & Volpi,* ECLI:EU:C:1977:51, paragraph 15. For that aspect, see also judgment in Case C-321/21 P, *Ryanair v Commission*, ECLI:EU:C:2023:713, paragraph 95: '*It follows that, unless those derogating provisions are to be deprived of all practical effect, State aid which is granted in accordance with those requirements, that is to say, for the purposes of an objective recognised therein and within the limits of what is necessary and proportionate to the achievement of that objective, cannot be held to be incompatible with the internal market having regard solely to the characteristics or effects[…] which are inherent in any State aid, that is to say, inter alia, for reasons relating to whether the aid is selective or distorts competition […].*'

Article 108 TFEU to find the infringement of another EU law provision, for which the EU Courts remain responsible. In turn, national courts may not interfere with the Commission's exclusive competence in the area of State aid and should not rule on an infringement of EU rules, if that is 'indissolubly linked' to the assessment of compatibility of aid under EU State aid rules.

Case C-225/91 – ***Matra v Commission*** **([20]):**

In its judgment of 15 June 1993, the Court of Justice had to decide on an action for annulment of a Commission Decision not to raise objections to an investment aid for vehicle manufacturers.

Portugal had notified that aid for a joint venture between Ford of Europe Inc. and Volkswagen AG ('NewCo') to set up a manufacturing unit for multi-purpose vehicles at Setúbal (Portugal). The Commission decided not to object to the aid in question.

Matra, a producer of multi-purpose vehicles and a future competitor of Newco, criticized the Commission for taking that decision without awaiting the outcome of the procedure under Council Regulation No 17 of 6 February 1962 ([21]), with respect to the agreement between Ford and VW, thereby disregarding the link between (now) Articles 101 and 102 TFEU (ex-Articles 85 and 92 of the Treaty) (the EU antitrust rules).

In that context, the Court ruled on the relationship between the procedure for reviewing State aid under Article 108 TFEU and the procedure under (now) Articles 101 and 102 TFEU (ex-Articles 85 and 86 EEC), which had been initiated by the Commission in parallel.

The Court confirmed the notion of 'indissoluble link' and the independence of the procedures:

' It must be noted in this respect that while the procedure provided for in Articles 92 and 93 leaves a wide discretion to the Commission, and under certain conditions to the Council, in coming to a decision on the compatibility of a system of State aid with the requirements of the common market, it is clear from the general scheme of the Treaty that that procedure must never produce a result which is contrary to the specific provisions of the Treaty (judgment in Case 73/79 Commission v Italy [1980] ECR 1533, paragraph 11). The Court has also held that those aspects of aid which contravene specific provisions of the Treaty other than Articles 92 and 93 may be so indissolubly linked to the object of the aid that it is impossible to evaluate them separately (judgment in Case 74/76 Iannelli v Meroni [1977] ECR 557).' ([22])

However, the Court underlined the independent character of the State aid and competition procedures: '*…the procedure under Article 85 et seq. and that under Article 92 et seq. of the Treaty are independent procedures governed by specific rules. Consequently, when taking a decision on the compatibility of State aid with the*

([20]) Judgment of 15 June 1993 in Case C-225/91 *Matra v Commission*, ECLI:EU:C:1993:239.

([21]) Council Regulation No 17 of 6 February 1962, First Regulation implementing Articles 85 and 86 of the Treaty, OJ, English Special Edition 1959-1962, p. 87.

([22]) Judgment of 15 June 1993 in Case C-225/91 *Matra v Commission*, ECLI:EU:C:1993:239, paragraphs 41, 44.

common market, the Commission is not obliged to await the outcome of a parallel procedure initiated under Regulation No 17, once it has reached the conclusion, based on an economic analysis of the situation and without any manifest error in the assessment of the facts, that the recipient of the aid is not in breach of Articles 85 and 86 of the Treaty.'

The Court further stated that in that case, the Commission did observe the inter-relationship between those two procedures: *'In the contested decision it accordingly examined the extent to which competition in the common market might be affected. In the notice (91/C 182/07) pursuant to Article 19(3) of Regulation No 17 (OJ 1991 C 182, p. 8), published before the contested decision was adopted, the Commission announced its intention to take a favourable decision on the agreements between Ford and VW in application of Article 85(3) of the Treaty. Finally, in the letter forwarding the contested decision to Matra, the Commission also expressed the view that the joint venture in question fulfilled the conditions for exemption under Article 85(3) of the Treaty.' ([23])*

Considering those circumstances, Matra was wrong to criticize the Commission for adopting the contested decision without awaiting the outcome of the investigation procedure carried out under Regulation No 17.

C-598/17 – *A-Fonds* ([24]):

In its judgment of 2 May 2019 on a preliminary ruling request by a Dutch court, the Court of Justice had to clarify whether a national court may assess a national measure that allegedly amounted to State aid, which may have breached other EU rules, such as Article 63 TFEU concerning the free movement of capital.

The issue arose in the context of a dividend tax refund withheld by a Dutch authority from a company (investing though a fund in that Member State), on the grounds that the company in question was established in another Member State (Germany). The Dutch legislation provided for the refund of dividend tax subject to a condition of residence on the national territory. Because of that, the company in question could not qualify for a dividend refund. Seeking to annul the withholding of the refund on these grounds, the national court wondered whether the grant of such a refund complies with EU law on State aid and if it was competent to control that measure against the rules of free movement of capital and asked for a preliminary ruling.

The Court reached the conclusion that a **residence condition** such as the one in the case at hand set out by a scheme for the refund of dividend tax was 'indissolubly linked' to the object of the exemption measure (which is to advantage only national undertakings), since it was **necessary for the attainment of the objective and functioning of the aid scheme ([25])**.

([23]) Judgment of 15 June 1993 in Case C-225/91 *Matra v Commission*, ECLI:EU:C:1993:239, paragraphs 46-47.

([24]) Judgment of 2 May 2019 in Case C-598/17 *A-Fonds*, ECLI:EU:C:2019:352.

([25]) Judgment of 2 May 2019 in Case C-598/17 *A-Fonds*, ECLI:EU:C:2019:352, paragraphs 49-50.

A **separation of this condition** was not deemed possible without adversely affecting the division of competences between the Commission and the national courts in the matter of State aid. ([26])

C-284/21 P – *Commission v Braesch and Others* ([27]):

In its judgment of 31 January 2023 ruling on an appeal by the European Commission to set aside a judgment rendered by the General Court ([28]), the Court of Justice had to decide on the existence of an indissoluble link in the context of burden-sharing measures in connection with the restructuring aid for the bank Monte dei Paschi di Siena ('BMPS').'.

Mr. Braesch and the other applicants in the judgment under appeal were holders of subordinated debt, known as 'FRESH bonds', from BMPS. They claimed they had been negatively affected by burden-sharing measures between BMPS's shareholders and subordinated creditors provided for in the restructuring plan and the commitments offered by the Italian authorities as part of financial assistance to BMPS.

In that context, Mr. Braesch and the other applicants argued the Commission was obliged to verify in its State aid decision that such burden-sharing measures comply with EU law.

In its State aid decision, the Commission considered whether the aid measures complied with the provisions of Directive 2014/59 establishing a framework for the recovery and resolution of credit institutions and investment firms ([29]). It concluded that the conditions under which the aid measures had been granted were in line with the exemption provided for in Article 32(4)(d) of Directive 2014/59.

Using that occasion, the Court restated the 'indissoluble link' test ([30]), clarifying the judgment in the *Hinkley Point C* case in which the Court had not explicitly referred to this test ([31]):

([26]) Judgment of 2 May 2019 in Case C-598/17 *A-Fonds*, ECLI:EU:C:2019:352, paragraph 51.

([27]) Judgment of 31 January 2023 in Case C-284/21 P *Commission v Braesch and Others*, ECLI:EU:C:2023:58.

([28]) Judgment of 24 February 2021, *Braesch and Others v Commission*, T-161/18, ECLI:EU:T:2021:102. The General Court rejected the plea of inadmissibility raised in the context of the action brought under Article 263 TFEU by Mr. Braesch and Other seeking the annulment of Commission Decision C(2017) 4690 final of 4 July 2017 on State Aid SA.47677 (2017/N) – Italy – New aid and amended restructuring plan of Banca Monte dei Paschi di Siena.

([29]) Commission Decision C(2017) 4690 final of 4 July 2017 on State aid SA.47677 (2017/N), paragraph 120 ff.

([30]) Judgment of 31 January 2023 in Case C-284/21 P *Commission v Braesch and Others*, ECLI:EU:C:2023:58, paragraphs 97-98.

([31]) Judgment of 22 September 2020 in Case C-594/18 P *Austria v Commission* EU:C:2020:742. By that judgment, the Court of Justice upheld the judgment of the General Court of 12 July 2018 in Case T-356/15 confirming the Commission decision of 8 October 2014 in case SA.34947 (2013/C). In that

'97. Indeed, where the modalities of an aid measure are so indissolubly linked to the object of the aid that it is impossible to evaluate them separately, their effect on the compatibility or incompatibility of the aid viewed as a whole must therefore of necessity be determined in the light of the procedure prescribed in Article 108 TFEU (see, to that effect, judgments of 22 March 1977, Iannelli & Volpi, 74/76, EU:C:1977:51, paragraph 14, and of 15 June 1993, Matra v Commission, C-225/91, EU:C:1993:239, paragraph 41).

98. Thus, the Court has held that State aid for an economic activity in the nuclear energy sector, that is shown upon examination to contravene rules of EU law on the environment cannot be declared compatible with the internal market pursuant to Article 107(3)(c) TFEU (judgment of 22 September 2020, Austria v Commission, C-594/18 P, EU:C:2020:742, paragraph 45). The central economic activity at the heart of the project which is financed by aid is indeed inseparable from the object of that aid, meaning that the Commission was required to ensure, in the case which gave rise to that judgment, that the proposed financing of the nuclear power plant at issue did not infringe those rules of EU law.'

The Court provided another example of an 'intrinsically linked' situation, in the field of equal treatment, noting that: *' […] in circumstances where, in essence, a Member State had altered the conditions determining the identity of the persons eligible for a pre-existing aid scheme, which had allegedly resulted in a breach of the principle of equal treatment as regards certain economic operators, the Court rejected an argument that such a breach of the principle of equal treatment resulting from that alteration of the scheme could not, in any event, render unlawful the Commission decision approving that scheme, as altered (judgment of 15 April 2008, Nuova Agricast, C-390/06, EU:C:2008:224, paragraphs 49 to 52). Indeed, such modalities, which determine the conditions of eligibility for an aid scheme, are also inseparable from the aid as such and are therefore among the factors which the Commission is required to examine and, as the case may be, to approve, with the result that, if such modalities lead to an infringement of general principles of EU law, a decision adopted by the Commission which authorises such a scheme is, in turn, necessarily rendered unlawful*.' ([32])

decision, the Commission had declared compatible under Article 107(3)(c) TFEU three aid measures granted by the United Kingdom for support to the Hinkley Point C Nuclear Power Plant. Those aid measures were found to contribute to an objective of common interest of promotion of nuclear energy set out in Article 2(c) of the Euratom Treaty. The Court stated that to declare aid compatible under Article 107(3)(c) TFEU, the Commission must verify that two conditions are met: The first condition consists in verifying that the aid facilitates the development of an economic activity. The second condition consists in verifying that the aid does not adversely affect trading conditions to an extent contrary to the common interest. In the context of the first condition, the Court observed that: *'[…] State aid which contravenes provisions or general principles of EU law cannot be declared compatible with the internal market (see, to that effect, judgment of 15 April 2008, Nuova Agricast, C-390/06, EU:C:2008:224, paragraphs 50 and 51)*' (see paragraph 44 of judgment of 22 September 2020 in Case C-594/18 P *Austria v Commission* EU:C:2020:742).

([32]) Judgment of 31 January 2023 in Case C-284/21 P *Commission v Braesch and Others*, ECLI:EU:C:2023:58, paragraph 99.

The Court noted that the Commission had to ensure that the aid, and the recapitalisation of BMPS which it was intended to finance, also did not infringe other relevant provisions or general principles of EU law ([33]).

The Court stated that the Commission verified that the State aid at issue complied with Article 32(4)(d) of Directive 2014/59 (conditions for resolution), and reached the conclusion, that that aid satisfied the requirements not to trigger a resolution procedure. In that context, the Commission also verified that the burden-sharing measures provided for in the restructuring plan were adequate for the purpose of limiting the amount of aid granted to the strict minimum necessary to achieve the objective of recapitalising BMPS. ([34])

However, the Court concluded that in the case at hand [and in connection with the question of whether Mr. Braesch was an 'interested party', within the meaning of Article 1(h) of Regulation 2015/1589 and so had standing to challenge a decision not to raise objections to a State aid measure ([35])], the Commission did not need to verify if a national burden-sharing mechanism infringes rights derived from other EU law, since such an infringement, if established, would not arise from the aid as such, its object or its indissociable modalities:

'However, the Commission was not required to verify whether that burden-sharing decided by the Italian Republic itself infringed the ***rights*** *which Braesch and Others claim to derive from* ***EU law or national law****. Such an infringement, even if it were established,* ***would not arise from the aid as such, its object or its indissociable modalities****, but rather […]* ***from the measures taken by that Member State*** *in order to obtain from the Commission a decision authorising that aid at the conclusion of the preliminary examination stage*'. ([36])

The Court concluded that the burden-sharing measures were purely national measures notified by Italy under its own responsibility and not imposed by the Commission. Those measures were legally distinct from the aid, the Commission having taken them into account only as a factual element for the purposes of adopting its decision. The Court found that the review the legality of those measures in the light of the relevant national and EU law was a matter for the competent national courts ([37]).

([33]) Judgment of 31 January 2023 in Case C-284/21 P *Commission v Braesch and Others*, ECLI:EU:C:2023:58, paragraph 100.

([34]) Judgment of 31 January 2023 in Case C-284/21 P *Commission v Braesch and Others*, ECLI:EU:C:2023:58, paragraphs 101-102.

([35]) See also Order of the Court of 14 December 2023 in Case C-742/21 P *CAPA and Others v Commission*, C-742/21 P, EU:C:2023:1000.

([36]) Judgment of 24 February 2021, *Braesch and Others v Commission*, T-161/18, ECLI:EU:T:2021:102, paragraph 103.

([37]) Judgment of 24 February 2021 in Case T-161/18, *Braesch and Others v Commission*, ECLI:EU:T:2021:102, paragraphs 106.

Case C-742/21 P – *CAPA* ([38])

In its Order of 14 December 2023, *CAPA and Others* v *Commission*, the Court ruled on an appeal on points of law, brought by the Coopérative des Artisans Pêcheurs Associés ('CAPA') for annulment of a General Court judgment rendered in Case T-777/19. CAPA had requested the annulment of a Commission decision approving operating aid for electricity generation by six offshore wind farms in French territorial waters.

The case concerns, among other, the notion of 'interested party', relevant for the admissibility of CAPA's appeal before the General Court. As in its judgment in Case C-284/21 P *Commission v Braesch and Others* the Court explains that measures adopted by Member States that are linked *de facto* but legally distinct do not constitute indissociable aspects of an aid measure ([39]) ([40]).

In that context, CAPA considered that the General Court failed to examine the consequences that the wind projects in question had on them and on the marine area concerned and that it had erred by limiting itself to establishing abstract distinctions between, on the one hand, the effects which would result from the disputed aid itself and, on the other hand, the effects of these projects which would have "no link" with this aid.

In that respect, the Court referred to the analysis given by the General Court in its ruling. The General Court had stated that, with regard to the alleged **impacts of the projects** in question on **fishery resources and the marine environment**, similarly to the impacts of those projects on fishing in the areas concerned, they depend **solely on the decisions of the French authorities implementing those projects and on the technical and regulatory measures applicable to them**, likely to have a positive or a negative influence on such impacts ([41]).

The General Court found that neither the allegations of the applicant fishers and the interveners in their support nor the elements which they had produced to support their

([38]) Order of the Court of 14 December 2023 in Case C-742/21 P *CAPA and Others v Commission*, EU:C:2023:1000.

([39]) Order of the Court of 14 December 2023 in Case C-742/21 P *CAPA and Others v Commission,* EU:C:2023:1000, paragraph 93.

([40]) See also Judgment of 5 September 2024 in Case C-224/23 P *Penya Barça Lyon : Plus que des supporters (PBL) et Issam Abdelmouine contre Commission*, EU:C:2024:682, paragraph 59: '*To that end, the person who relies, in a given case, on the status of 'interested party' must demonstrate to the requisite legal standard, first, that it is indeed the grant of the alleged aid, as such, which may affect his or her interests, to the exclusion of any other conduct or measure, in particular any legally distinct measure which may have been adopted by the Member State granting that aid, even if such a measure is in fact linked to that aid. It is only where some of the procedures for implementing such aid are so inextricably linked to its purpose that it would not be possible to assess them in isolation that those inextricably linked procedures may be relied on in order to demonstrate that the person in question is an 'interested party' […]*'

([41]) Order of the Court of 14 December 2023 in Case C-742/21 P *CAPA and Others v Commission,* EU:C:2023:1000, paragraph 22.

claims showed a link between the **payment of the disputed aid and those impacts on fishing resources and the marine environment ([42])**.

Therefore, the General Court found that that the **mechanism for granting the disputed aid** had **no link with the alleged impacts of the projects in question on the activities of the applicant fishers**. On the contrary, those impacts were **inherent**, on the one hand, **to the decisions of the French authorities to implement those projects in the areas concerned** as part of their **policy for the exploitation of energy resources** and, on the other hand, to the **regulation of the maritime public space and the technical measures applicable to those projects ([43])**.

Case C-59/23 P– *Paks II ([44])*

In its judgment of 11 September 2025, the Court set aside the General Court's ruling and annulled the Commission's decision approving State aid notified by Hungary for the Paks II nuclear power plant.

The Court reiterated the 'intrinsically linked' test, as per the settled case law: *'[…] it is clear from the case-law of the Court that the Commission must take into account infringements of provisions of EU law other than those relating to State aid where such an infringement arises from the **economic activity financed**, from the **aid** or from its **object** as such or from **aspects inextricably linked to the object of the aid** […].' ([45])*

*Thus, **where the modalities of an aid measure are so indissolubly linked to its object that it is impossible to evaluate them separately, their effect on the compatibility or incompatibility of that aid viewed as a whole must therefore of necessity be determined in the framework of the procedure prescribed in Article 108 TFEU** (judgment of 31 January 2023, Commission v Braesch and Others, C-284/21 P, EU:C:2023:58, paragraph 97 and the case-law cited). Such modalities are therefore among the factors which the Commission is required to examine and, as the case may be, to approve, with the result that, if they lead to an infringement of provisions or general principles of EU law, a decision adopted by the Commission authorising that aid would necessarily be rendered unlawful (see, to that effect, judgment of 31 January 2023, Commission v Braesch and Others, C-284/21 P, EU:C:2023:58, paragraph 99)' ([46]).*

([42]) Order of the Court of 14 December 2023 in Case C-742/21 P *CAPA and Others v Commission,* C-742/21 P, EU:C:2023:1000, paragraph 22.

([43]) Order of the Court of 14 December 2023 in Case C-742/21 P *CAPA and Others v Commission,* C-742/21 P, EU:C:2023:1000, paragraph 22.

([44]) Judgment of 11 September in Case C-59/23 P*, Austria v Commission*, ECLI:EU:C:2025:686.

([45]) Judgment of 11 September in Case C-59/23 P*, Austria v Commission*, ECLI:EU:C:2025:686, paragraph 53.

([46]) Judgment of 11 September 2025 in Case C-59/23 P*, Austria v Commission*, ECLI:EU:C:2025:686, paragraph 54.

The Court clarified once again that the 'intrinsically linked' test remains the reference test, and is not altered by its judgment in Case C-594/18 P *Hinkley Point C*:

'55 In that regard, the General Court was entitled to hold, in paragraph 30 of the judgment under appeal, that ***it cannot be inferred from the judgment of 22 September 2020, Austria v Commission (C-594/18 P, EU:C:2020:742), that the Court of Justice intended to abandon its case-law under which a distinction must be drawn between aspects that are inextricably linked to the object of the aid and aspects that are not****, and that, accordingly, the arguments of the Republic of Austria in that regard had to be rejected. It is true that the Court of Justice did not refer, in the judgment of 22 September 2020, Austria v Commission (C-594/18 P, EU:C:2020:742), to its case-law on the aspects that are inextricably linked to an aid measure or the object thereof. Nevertheless, that was due to the fact that, in the case that give rise to that judgment,* ***the only issue was an alleged infringement of EU law arising from the very economic activity itself that the aid in question in that case was intended to finance and that, as a result, could not be separated from the object of that aid*** *(see, to that effect, judgment of 31 January 2023, Commission v Braesch and Others, C-284/21 P, EU:C:2023:58, paragraph 98).' ([47])*

To establish the inextricable link between a possible infringement of the EU public procurement rules and the object of the aid, the Court focused, first, on determining the object of the aid, and concluded that: *'[..]* ***since the construction of those reactors is, first, a factor that is necessary for the attainment of the objective pursued by the notified measure at issue*** *and,* ***second, a process financed, at least indirectly, with Hungary's resources,*** *that* ***construction forms an integral part of the aid measure notified by that Member State*** *and could not, therefore, validly be excluded by the General Court from the object of that measure.'*

Having established that, in this particular case, the object of the aid necessarily included the construction of the two nuclear plants, the Court moved on to **determining the indissociable aspects of the object of the aid.**

Referring to the settled case-law ([48]), the Court recalled that aspects which, although forming part of the aid measure at issue, are not specifically necessary for the attainment of its object or for its functioning are not aspects that are inextricably linked to the object of the aid. At the same time, measures adopted by the Member State concerned that are linked *de facto*, but legally distinct do not constitute indissociable aspects of an aid measure ([49]).

Given the specific context of the case, where the selection of the constructor and the technical properties of the reactors where a precondition for the measure as notified,

([47]) Judgment of 11 September 2025 in Case C-59/23 P*, Austria v Commission*, ECLI:EU:C:2025:686, paragraph 55.

([48]) Judgments of 22 March 1977, *Iannelli & Volpi*, 74/76, EU:C:1977:5 and of 2 May 2019, *A-Fonds,* C-598/17, EU:C:2019:352; order of 14 December 2023, *CAPA and Others v Commission*, C-742/21 P, EU:C:2023:1000.

([49]) Judgment of 11 September 2025 in Case C-59/23 P*, Austria v Commission*, ECLI:EU:C:2025:686, paragraph 71.

the Court found that the direct award of the construction contract was indispensable for the attainment of the object of the aid ([50]).

3. TAKEAWAYS FROM THE ILLUSTRATIVE EXAMPLES

- Considering the illustrative examples above, the following main aspects should be considered in connection with the 'indissoluble link' test:

  1. Determining the **object of the aid**;

  2. Checking if the **activity** subject to the aid or the **aspects** of the State aid measure **(e.g., conditions**, **factors or modalities)** approved by the State aid decision **are indissolubly linked** to the object of the aid. For that purpose, one must determine if they form part of or are **necessary to achieve its objective or for its proper functioning**.

  - For instance, a residence condition in an aid scheme for the refund of dividend tax was found to be 'indissolubly linked' to the object of the aid. This condition is necessary to achieve the objective and functioning of the aid scheme aid (e.g., to advantage national undertakings) (C-598/17 – *A-Fonds).*

  By contrast, aspects of the State aid measure which, although forming part of that aid measure, are **not specifically necessary for achieving its objective or for its proper functioning**, are not indissolubly linked to the object of the aid.

  - For instance, taxation (under Articles 34 TFEU and Article 110 TFEU) and antitrust aspects (Article 101 and 102 TFEU) were found not to be indissolubly linked to the object of aid (providing operating or investment aid) (Case 74/76 *Ianelli & Volpi*, Case C-225/91 *Matra*).

- An infringement of a provision of EU Law must arise from the aid as such, its object or its indissociable modalities, and not from other measures taken by that Member State**.** Measures that are **linked *de facto* but are legally distinct** do not constitute indissociable aspects of an aid measure (C-284/21 P **–** *Commission v Braesch and Others*, Case C-59/23 P– *PAKS II).*

  - For instance, operating licences and occupancy decisions adopted by a Member State relating to wind farm projects were found not to be indissolubly linked to operating aid for these farms (Case C-742/21 P – C-742/21 P - *CAPA*).

([50]) Judgment of 11 September 2025 in Case C-59/23 P*, Austria v Commission*, ECLI:EU:C:2025:686, paragraphs 72-75.