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Advocate General's Opinion in Joined Cases C-258/23 | *Imagens Médicas Integradas*, C-259/23 | *Synlabhealth II* and C-260/23 | *SIBS – Sociedade Gestora de Participações Sociais* and Others

According to Advocate General Medina, compliance with the right to the protection of personal data does not require prior authorisation by a judicial authority in competition investigations

However, the seizure of business emails must be subject to adequate and effective procedural safeguards and to a subsequent judicial review

As part of an investigation into infringements of competition law, the Portuguese Competition Authority seized emails exchanged between employees of the companies under investigation. Those companies objected, arguing that their right to secrecy of correspondence had been infringed and that it was up to the investigating judge, rather than the Public Prosecutor's Office, to authorise such seizures.

The Portuguese court hearing the cases asks the Court of Justice, in essence, whether the authorisation issued by the Public Prosecutor's Office was sufficient or whether the mere fact that the documents seized came from communications contained in the employees' business emails makes it possible to classify those documents as 'correspondence', the inviolability of which is a fundamental right which enjoys a higher level of protection, thus requiring the intervention of the investigating judge.

In her first Opinion of 20 June 2024, Advocate General Laila Medina proposed that the Court of Justice provide an answer to the Portuguese court stating that the fundamental right to respect for private life ¹ does not preclude a national competition authority from seizing emails without prior judicial authorisation.

Following delivery of the judgment in *Bezirkshauptmannschaft Landeck*, ² the cases were referred to the Grand Chamber. In that judgment, the Court held that EU law does not preclude national legal rules which afford the competent authorities the possibility to access personal data contained in a mobile telephone for the purposes of criminal investigations. However, reliance on that possibility must be subject, *inter alia*, to prior review by a judge or an independent administrative body, except in duly justified cases of urgency.

In her Opinion delivered today, which the Court requested in order to supplement the first Opinion, Advocate General Medina takes the view that **the case-law in *Bezirkshauptmannschaft Landeck* cannot be transposed to the cases under consideration, since the situation is not comparable. The seizures carried out by the national competition authorities** are intended to uncover anticompetitive practices in the internal market and **relate to business information concerning legal persons and not individuals** who are, in principle, affected by such seizures in an ancillary manner. Furthermore, access to the emails of an undertaking **does not allow full and uncontrolled access to all the data stored in a single place, which is likely to provide a very detailed and in-depth picture of the private life of the data subject**, as opposed to the specific case of a mobile telephone.

As regards **the interference with the fundamental right to the protection of personal data**³ created by the inspection activities in question, the Advocate General Medina considers that the principle of proportionality is complied with provided that **certain procedural safeguards are ensured**. Those safeguards are **in addition to the obligations**, incumbent on national competition authorities **under the General Data Protection Regulation**,⁴ and to **subsequent judicial review** both during and at the end of the investigation procedure. Prior judicial authorisation would, in principle, only be required in the case of seizures of emails carried out at a person's private residence or in order to incriminate a natural person under criminal law.

The Advocate General adds that **EU law**⁵ **nevertheless allows** Member States, if they so wish, **to provide for a mechanism for prior authorisation** issued by a judicial authority, which includes the Public Prosecutor's Office, in respect of inspections by national competition authorities.

NOTE: The Advocate General's Opinion is not binding on the Court of Justice. It is the role of the Advocates General to propose to the Court, in complete independence, a legal solution to the cases for which they are responsible. The Judges of the Court are now beginning their deliberations in this case. Judgment will be given at a later date.

NOTE: A reference for a preliminary ruling allows the courts and tribunals of the Member States, in disputes which have been brought before them, to refer questions to the Court of Justice about the interpretation of EU law or the validity of an EU act. The Court of Justice does not decide the dispute itself. It is for the national court or tribunal to dispose of the case in accordance with the Court's decision, which is similarly binding on other national courts or tribunals before which a similar issue is raised.

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

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¹ Article 7 of the Charter of Fundamental Rights of the European Union.

² Judgment of 4 October 2024, *Bezirkshauptmannschaft Landeck (Attempt to access personal data stored on a mobile telephone)*, [C-548/21](#) (see [press release No 171/24](#)).

³ Article 8 of the Charter of Fundamental Rights.

⁴ [Regulation \(EU\) 2016/679](#) of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data.

⁵ [Directive \(EU\) 2019/1](#) of the European Parliament and of the Council of 11 December 2018 to empower the competition authorities of the Member States to be more effective enforcers and to ensure the proper functioning of the internal market.