

Provisional text

JUDGMENT OF THE COURT (Grand Chamber)

16 July 2026 (*)

(References for a preliminary ruling – Competition – Agreements, decisions and concerted practices – Abuse of a dominant position – Articles 101 and 102 TFEU – Implementation by the national competition authorities – Decision of a national competition authority ordering an inspection – Search of the premises of the undertakings concerned – Seizure of business records resulting from email communications – Warrant issued by the Public Prosecutor’s Office – Articles 7 and 8 of the Charter of Fundamental Rights of the European Union – Right to respect for private life and communications – Right to the protection of personal data – Procedural requirements – No prior authorisation by a court)

In Joined Cases C-258/23 to C-260/23,

THREE REQUESTS for a preliminary ruling under Article 267 TFEU from the Tribunal da Concorrência, Regulação e Supervisão (Competition, Regulation and Supervision Court, Portugal), made by decisions of 21 April 2023, received at the Court on 24 April 2023, in the proceedings

IMI – Imagens Médicas Integradas S. A. (C-258/23),

Synlabhealth II S. A. (C-259/23),

SIBS – Sociedade Gestora de Participações Sociais S. A.,

SIBS, Cartões – Produção e Processamento de Cartões S. A.,

SIBS Processos – Serviços Interbancários de Processamento S. A.,

SIBS International S. A.,

SIBS Pagamentos S. A.,

SIBS Gest S. A.,

SIBS Forward Payment Solutions S. A.,

SIBS MB S. A. (C-260/23)

v

Autoridade da Concorrência,

THE COURT (Grand Chamber),

composed of K. Lenaerts, President, T. von Danwitz, Vice-President, K. Jürimäe, C. Lycourgos, I. Jarukaitis, O. Spineanu-Matei, M. Condinanzi and F. Schalin, Presidents of Chambers, S. Rodin (Rapporteur), E. Regan, N. Piçarra, A. Kumin, N. Jääskinen, S. Gervasoni and N. Fenger, Judges,

Advocate General: L. Medina,

Registrar: L. Carrasco Marco, Administrator,

having regard to the written procedure and further to the hearing on 3 June 2025,

after considering the observations submitted on behalf of:

- IMI – Imagens Médicas Integradas S. A., by A. Dias Henriques, R. Oliveira, M. Rodrigues Caldeira and M. Valente, advogados,
- Synlabhealth II S. A., by A. Martins Ferreira, advogado,
- SIBS – Sociedade Gestora de Participações Sociais S. A. and others, by M. de Abreu Castelo Branco, J. Pateira Ferreira and C. Pinto Correia, advogados,
- the Autoridade da Concorrência, by D. Cardoso, A. Cruz Nogueira and S. Parodi, advogadas,
- the Portuguese Government, by C. Alves, P. Barros da Costa and A. Oliveira Santos, acting as Agents,
- the Czech Government, by L. Halajová, M. Smolek and J. Vlášil, acting as Agents,
- the Greek Government, by K. Boskovits, acting as Agent,
- the Finnish Government, by H. Leppo, acting as Agent,
- the Swedish Government, by F.-L. Göransson, acting as Agent,
- the European Commission, by P. Berghe, P. Caro de Sousa and E. Rousseva, acting as Agents,
- the EFTA Surveillance Authority, by C. Simpson, E. Gromnicka and M.-M. Joséphidès, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 23 October 2025,

makes the following

Judgment

1 These requests for a preliminary ruling concern the interpretation of Article 7 of the Charter of Fundamental Rights of the European Union ('the Charter').

2 The requests have been made in three sets of proceedings between a number of undertakings and the Autoridade da Concorrência (Competition Authority, Portugal; 'the Competition Authority') concerning the lawfulness of search measures and the examination, gathering and seizure of evidence at the premises of those undertakings as part of investigations conducted by that authority relating to anticompetitive practices referred to in Articles 101 and 102 TFEU.

Legal framework

European Union law

TFEU

3 Article 101 TFEU provides:

'1. The following shall be prohibited as incompatible with the internal market: all agreements between undertakings, decisions by associations of undertakings and concerted practices which may affect trade between Member States and which have as their object or effect the prevention, restriction or distortion of competition within the internal market, and in particular those which:

- (a) directly or indirectly fix purchase or selling prices or any other trading conditions;
- (b) limit or control production, markets, technical development, or investment;
- (c) share markets or sources of supply;

- (d) apply dissimilar conditions to equivalent transactions with other trading parties, thereby placing them at a competitive disadvantage;
- (e) make the conclusion of contracts subject to acceptance by the other parties of supplementary obligations which, by their nature or according to commercial usage, have no connection with the subject of such contracts.

2. Any agreements or decisions prohibited pursuant to this Article shall be automatically void.

...'

4 Article 102 TFEU provides:

'Any abuse by one or more undertakings of a dominant position within the internal market or in a substantial part of it shall be prohibited as incompatible with the internal market in so far as it may affect trade between Member States.

Such abuse may, in particular, consist in:

- (a) directly or indirectly imposing unfair purchase or selling prices or other unfair trading conditions;
- (b) limiting production, markets or technical development to the prejudice of consumers;
- (c) applying dissimilar conditions to equivalent transactions with other trading parties, thereby placing them at a competitive disadvantage;
- (d) making the conclusion of contracts subject to acceptance by the other parties of supplementary obligations which, by their nature or according to commercial usage, have no connection with the subject of such contracts.'

The Charter

5 Article 7 of the Charter states:

'Everyone has the right to respect for his or her private and family life, home and communications.'

6 Under Article 8 of the Charter:

- '1. Everyone has the right to the protection of personal data concerning him or her.
- 2. Such data must be processed fairly for specified purposes and on the basis of the consent of the person concerned or some other legitimate basis laid down by law. Everyone has the right of access to data which has been collected concerning him or her, and the right to have it rectified.

...'

Regulation (EC) No 1/2003

7 Recital 26 of Council Regulation (EC) No 1/2003 of 16 December 2002 on the implementation of the rules on competition laid down in Articles [101] and [102 TFEU] (OJ 2003 L 1, p. 1) states:

'Experience has shown that there are cases where business records are kept in the homes of directors or other people working for an undertaking. In order to safeguard the effectiveness of inspections, therefore, officials and other persons authorised by the [European] Commission should be empowered to enter any premises where business records may be kept, including private homes.

However, the exercise of this latter power should be subject to the authorisation of the judicial authority.’

8 Under Article 3(1) of that regulation: ‘Where the competition authorities of the Member States or national courts apply national competition law to agreements, decisions by associations of undertakings or concerted practices within the meaning of Article [101(1) TFEU] which may affect trade between Member States within the meaning of that provision, they shall also apply Article [101 TFEU] to such agreements, decisions or concerted practices. Where the competition authorities of the Member States or national courts apply national competition law to any abuse prohibited by Article [102 TFEU], they shall also apply Article [102 TFEU].’

9 Article 5 of Regulation No 1/2003 states:

‘The competition authorities of the Member States shall have the power to apply Articles [101] and [102 TFEU] in individual cases. For this purpose, acting on their own initiative or on a complaint, they may take the following decisions:

- requiring that an infringement be brought to an end,
- ordering interim measures,
- accepting commitments,
- imposing fines, periodic penalty payments or any other penalty provided for in their national law.

Where on the basis of the information in their possession the conditions for prohibition are not met[,] they may likewise decide that there are no grounds for action on their part.’

10 Article 20 of that regulation, entitled ‘The Commission’s powers of inspection’, provides:

‘1. In order to carry out the duties assigned to it by this Regulation, the Commission may conduct all necessary inspections of undertakings and associations of undertakings.

2. The officials and other accompanying persons authorised by the Commission to conduct an inspection are empowered:

- (a) to enter any premises, land and means of transport of undertakings and associations of undertakings;
- (b) to examine the books and other records related to the business, irrespective of the medium on which they are stored;
- (c) to take or obtain in any form copies of or extracts from such books or records;

...

3. The officials and other accompanying persons authorised by the Commission to conduct an inspection shall exercise their powers upon production of a written authorisation specifying the subject matter and purpose of the inspection and the penalties provided for in Article 23 in case the production of the required books or other records related to the business is incomplete or where the answers to questions asked under paragraph 2 of the present Article are incorrect or misleading. In good time before the inspection, the Commission shall give notice of the inspection to the competition authority of the Member State in whose territory it is to be conducted.

4. Undertakings and associations of undertakings are required to submit to inspections ordered by decision of the Commission. The decision shall specify the subject matter and purpose of the inspection, appoint the date on which it is to begin and indicate the penalties provided for in Articles 23 and 24 and the right to have the decision reviewed by the Court of Justice. The Commission shall take such decisions after consulting the competition authority of the Member State in whose territory the inspection is to be conducted.

...

6. Where the officials and other accompanying persons authorised by the Commission find that an undertaking opposes an inspection ordered pursuant to this Article, the Member State concerned shall afford them the necessary assistance, requesting where appropriate the assistance of the police or of an equivalent enforcement authority, so as to enable them to conduct their inspection.

7. If the assistance provided for in paragraph 6 requires authorisation from a judicial authority according to national rules, such authorisation shall be applied for. Such authorisation may also be applied for as a precautionary measure.

...'

11 Article 21 of that Regulation No 1/2003, entitled 'Inspection of other premises', provides:

'1. If a reasonable suspicion exists that books or other records related to the business and to the subject matter of the inspection, which may be relevant to prove a serious violation of Article [101] or Article [102 TFEU], are being kept in any other premises, land and means of transport, including the homes of directors, managers and other members of staff of the undertakings and associations of undertakings concerned, the Commission can by decision order an inspection to be conducted in such other premises, land and means of transport.

2. The decision shall specify the subject matter and purpose of the inspection, appoint the date on which it is to begin and indicate the right to have the decision reviewed by the Court of Justice. It shall in particular state the reasons that have led the Commission to conclude that a suspicion in the sense of paragraph 1 exists. The Commission shall take such decisions after consulting the competition authority of the Member State in whose territory the inspection is to be conducted.

3. A decision adopted pursuant to paragraph 1 cannot be executed without prior authorisation from the national judicial authority of the Member State concerned. The national judicial authority shall control that the Commission decision is authentic and that the coercive measures envisaged are neither arbitrary nor excessive having regard in particular to the seriousness of the suspected infringement, to the importance of the evidence sought, to the involvement of the undertaking concerned and to the reasonable likelihood that business books and records relating to the subject matter of the inspection are kept in the premises for which the authorisation is requested. The national judicial authority may ask the Commission, directly or through the Member State competition authority, for detailed explanations on those elements which are necessary to allow its control of the proportionality of the coercive measures envisaged.

However, the national judicial authority may not call into question the necessity for the inspection nor demand that it be provided with information in the Commission's file. The lawfulness of the Commission decision shall be subject to review only by the Court of Justice.

...'

12 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, and repealing Directive 95/46/EC (General Data Protection Regulation) (OJ 2016 L 119, p. 1, and corrigendum OJ 2018 L 127, p. 2; ‘the GDPR’), provides in Article 9, entitled ‘Processing of special categories of personal data’:

‘1. Processing of personal data revealing racial or ethnic origin, political opinions, religious or philosophical beliefs, or trade union membership, and the processing of genetic data, biometric data for the purpose of uniquely identifying a natural person, data concerning health or data concerning a natural person’s sex life or sexual orientation shall be prohibited.

2. Paragraph 1 shall not apply if one of the following applies:

...

(g) processing is necessary for reasons of substantial public interest, on the basis of Union or Member State law which shall be proportionate to the aim pursued, respect the essence of the right to data protection and provide for suitable and specific measures to safeguard the fundamental rights and the interests of the data subject;

...’

Directive (EU) 2019/1

13 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 (OJ 2019 L 11, p. 3) states the following in recitals 30 to 34:

‘(30) The investigative powers of national administrative competition authorities should be adequate to meet the enforcement challenges of the digital environment, and should enable [national competition authorities] to obtain all information related to the undertaking or association of undertakings which is subject to the investigative measure in digital form, including data obtained forensically, irrespective of the medium on which the information is stored, such as on laptops, mobile phones, other mobile devices or cloud storage.

(31) National administrative competition authorities should be able to carry out all necessary inspections of premises of undertakings and associations of undertakings where, in line with the case-law of the Court of Justice of the European Union, they can show that there are reasonable grounds for suspecting an infringement of Article 101 or 102 TFEU. This Directive should not prevent Member States from requiring prior authorisation by a national judicial authority for such inspections.

(32) To be effective, the power of national administrative competition authorities to carry out inspections should enable them to access information that is accessible to the undertaking or association of undertakings or person subject to the inspection and which is related to the undertaking or the association of undertakings under investigation. This should necessarily include the power to search for documents, files or data on devices which are not precisely identified in advance. Without such power, it would be impossible to obtain the information necessary for the investigation where undertakings or associations of undertakings adopt an obstructive attitude or refuse to cooperate. The power to examine books or records should cover all forms of correspondence, including electronic messages, irrespective of whether they appear to be unread or have been deleted.

(33) To minimise the unnecessary prolongation of inspections, national administrative competition authorities should have the power to continue making searches and to select copies or extracts of books and records related to the business of the undertaking or association of undertakings being inspected at the authority's premises or at other designated premises. Such searches should ensure the continued due respect of undertakings' rights of defence.

(34) Experience shows that business records may be kept in the homes of directors, managers and other members of staff of undertakings or of associations of undertakings, in particular because of the increased use of more flexible working arrangements. In order to ensure that inspections are effective, national administrative competition authorities should have the power to enter any premises, including private homes, if they can show that there is a reasonable suspicion that business records which may be relevant to prove an infringement of Article 101 or 102 TFEU are being kept in those premises. The exercise of that power should be subject to the national administrative Competition Authority having obtained prior authorisation from a national judicial authority, which may include a public prosecutor in certain national legal systems. This should not prevent Member States in cases of extreme urgency from entrusting the tasks of a national judicial authority to a national administrative competition authority acting as a judicial authority or, by way of exception, allowing for such inspections to be carried out with the consent of those subject to inspection. ...'

14 Article 6 of that directive, entitled 'Power to inspect business premises', is worded as follows:

'1. Member States shall ensure that national administrative competition authorities are able to conduct all necessary unannounced inspections of undertakings and associations of undertakings for the application of Articles 101 and 102 TFEU. Member States shall ensure that the officials and other accompanying persons authorised or appointed by national competition authorities to conduct such inspections are, at a minimum, empowered:

- (a) to enter any premises, land, and means of transport of undertakings and associations of undertakings;
- (b) to examine the books and other records related to the business irrespective of the medium on which they are stored, and to have the right to access any information which is accessible to the entity subject to the inspection;
- (c) to take or obtain, in any form, copies of or extracts from such books or records and, where they consider it appropriate, to continue making such searches for information and the selection of copies or extracts at the premises of the national competition authorities or at any other designated premises;

...

2. Member States shall ensure that undertakings and associations of undertakings are required to submit to the inspections referred to in paragraph 1. Member States shall also ensure that, where an undertaking or association of undertakings opposes an inspection that has been ordered by a national administrative competition authority and/or that has been authorised by a national judicial authority, national competition authorities are able to obtain the necessary assistance of the police or of an equivalent enforcement authority so as to enable them to conduct the inspection. Such assistance may also be obtained as a precautionary measure.

3. This Article is without prejudice to requirements under national law for the prior authorisation of such inspections by a national judicial authority.'

15 Article 7 of that directive, entitled 'Power to inspect other premises', provides:

‘1. Member States shall ensure that if a reasonable suspicion exists that books or other records related to the business and to the subject matter of the inspection, which may be relevant to prove an infringement of Article 101 or Article 102 TFEU, are being kept in any premises, land or means of transport other than those referred to in point (a) of Article 6(1) of this Directive, including the homes of directors, managers, and other members of staff of undertakings or associations of undertakings, national administrative competition authorities are able to conduct unannounced inspections in such premises, land and means of transport.

2. Such inspections shall not be carried out without the prior authorisation of a national judicial authority.

3. Member States shall ensure that the officials and other accompanying persons authorised or appointed by national competition authorities to conduct an inspection in accordance with paragraph 1 of this Article at a minimum have the powers set out in points (a), (b) and (c) of Article 6(1) and Article 6(2).

16 Under Article 32 of that directive, ‘Member States shall ensure that the types of proof that are admissible as evidence before a national competition authority include documents, oral statements, electronic messages, recordings and all other objects containing information, irrespective of the form it takes and the medium on which information is stored.’

Portuguese law

17 Article 34 of the Constituição da República Portuguesa (Constitution of the Portuguese Republic), entitled ‘Inviolability of a person’s home and correspondence’, provides:

‘1. A person’s home and the secrecy of correspondence and other means of private communication are inviolable.

...

4. The public authorities are prohibited from interfering in any way with correspondence, telecommunications or other means of communication, save in the cases in which the law so provides in matters relating to criminal procedure.’

18 Lei n.º 19/2012 que aprova o novo regime jurídico da concorrência, revogando as Leis n.ºs 18/2003, de 11 de junho, e 39/2006, de 25 de agosto, e procede à segunda alteração à Lei n.º 2/99, de 13 de janeiro (Law No 19/2012 establishing the new rules on competition, repealing Law No 18/2003 of 11 June 2003 and Law No 39/2006 of 25 August 2006, and amending for the second time Law No 2/99 of 13 January 1999), of 8 May 2012 (*Diário da República*, Series I, No 89; ‘the Law on Competition’), provides in Articles 2(3) and (5):

‘3. The present law shall be interpreted in a manner consistent with European Union law, in the light of the case-law of the Court of Justice of the European Union, including in matters of practices restrictive of competition which are not capable of affecting trade between Member States.

...

5. In the context of Articles 101 and 102 [TFEU], the implementation of the present law shall respect the general principles of European Union law and the [Charter].’

19 Article 18 of that law states:

‘1. When exercising its powers to impose penalties, the Competition Authority, through its bodies or officials, may inter alia:

...

(c) search for, examine, retrieve and seize written extracts and other documentation on the premises, land or means of transport of undertakings or associations of undertakings, irrespective of the medium on which they are stored, whenever such steps are necessary in order to obtain evidence;

...

2. The steps outlined in subparagraphs (c) and (d) of the preceding paragraph require an order of the judicial authority having jurisdiction.

...'

20 Article 20(1) of that law provides that the seizure of documents, irrespective of their nature or the medium on which they are stored, shall be authorised, ordered or validated by a decision of the judicial authority.

21 Article 20(6) of that law provides that, where documents covered by banking secrecy are seized in banks or other credit institutions, prior authorisation from the investigating judge is required.

22 In its initial version, Article 21 of the Law on Competition was worded as follows:

'The Public Prosecutor's Office for the area where the Competition Authority has its headquarters or, when expressly provided for, the investigating judge for that area, shall have the power to authorise the steps provided for in Article 18(1)(c) and (d), Article 19 and Article 20.'

23 Article 21 of the Law on Competition, as amended by Lei n.º 17/2022 (Law No 17/2022) of 17 August 2022, provides as follows:

'The judicial authority with jurisdiction for the area where the [Competition Authority] has its headquarters is empowered to authorise the steps set out in Article 18(1)(a) to (d), Article 19 and Article 20.'

The disputes in the main proceedings and the questions referred for a preliminary ruling

24 The Competition Authority opened investigations in a number of economic sectors in Portugal with a view to determining the existence of anticompetitive practices contrary, inter alia, to Articles 101 and 102 TFEU. More specifically, those investigations concerned, respectively, a potential concerted practice between undertakings that led to an increase in prices in the provision of teleradiology services to hospitals forming part of the national health service (Case C-258/23), a potential agreement on the prices of the 'COVID-19' tests requested from the Portuguese public health authorities (Case C-259/23) and a suspicion of abuse of a dominant position in the field of payment processing (Case C-260/23).

25 In that context, the Competition Authority considered it necessary to carry out inspections at the premises of the companies IMI – Imagens Médicas Integradas S. A., Synlabhealth II S. A. and of the SIBS group ('the applicants in the main proceedings'), for the purpose of examining, gathering and seizing evidence. The requests made to the judicial authority having jurisdiction, namely the Portuguese Public Prosecutor's Office, for prior authorisation to carry out those inspections were granted.

26 Under the terms of the warrants issued by the Public Prosecutor's Office, the Competition Authority was empowered, first, to seize all documents directly or indirectly linked to anticompetitive practices, in particular emails and internal documents intended for the dissemination of information

between different hierarchical levels and the preparation of decisions in the field of the undertakings' commercial policy, and, second, to examine and copy the information contained therein. Specifically, as regards the inspection measures intended to be taken in respect of IMI and Synlabhealth II, those warrants excluded the seizure of evidence in premises used for healthcare and for the archiving of documents covered by medical confidentiality.

27 During the inspections carried out from January 2021 to March 2022 at the premises of the applicants in the main proceedings, the Competition Authority examined emails from the employees of those undertakings and seized computer files considered relevant for the purposes of its investigations. Thus, 1 405, 731 and 10 797 computer files were seized respectively.

28 Those undertakings challenged the lawfulness of those inspections before the Tribunal da Concorrência, Regulação e Supervisão (Competition, Regulation and Supervision Court, Portugal), which is the referring court.

29 That court notes that the Law on Competition confers on the Competition Authority the power to seize documents, irrespective of the medium on which they are stored, provided that authorisation has been granted in advance by the Public Prosecutor's Office. That court also notes that, under Article 20 of the Law on Competition, prior authorisation granted by a court is required only in certain situations, namely where the authorisation relates to inspections carried out at the home of a natural person, in a banking institution, in a law firm or in a medical practice.

30 According to that court, the provisions of that law are consistent with the rationale underlying criminal law, which is to say that the intervention of an investigating judge is required where a means of obtaining evidence is liable to be in breach of fundamental rights, whereas, in other situations, the approval of an inspection by the Public Prosecutor's Office, as the judicial authority with jurisdiction, is regarded as sufficient.

31 In that regard, the referring court states, first of all, that, according to the case-law of the Portuguese courts having jurisdiction in the matter, an inspection of an undertaking for the purpose of investigating the existence of anticompetitive practices is not likely to be in breach of fundamental rights. In particular, messages of the employees of that undertaking cannot be classified as 'correspondence' protected by Article 7 of the Charter, when they are transmitted through its functional messaging services.

32 That court then refers to the provisions of Regulation No 1/2003 relating to the Commission's powers of investigation. It notes that, under Article 20 of that regulation, the Commission may carry out all necessary inspections of undertakings and associations of undertakings and, in that context, examine books and any other 'records related to the business', irrespective of the medium on which they are stored. Under Article 21 of that regulation, inspections in other premises, such as the homes of directors, managers and members of staff are also possible, but they would require prior authorisation from the judicial authority having jurisdiction. In addition, recital 26 of that regulation classifies documents in the electronic messaging services of undertakings as 'business records'.

33 In addition, the referring court mentions Directive 2019/1, concerning the powers of the competition authorities of the Member States. It follows from recitals 30 and 32, and Article 6 of that directive that those authorities should be entitled to obtain all information relating to the undertaking subject to an investigative measure, irrespective of the medium on which that information is stored. To that end, those authorities should be able to seize all forms of correspondence, including electronic messages.

34 That court notes, moreover, that, under Article 2(3) and (5) thereof, the Law on Competition must be interpreted in a manner consistent with EU law, including with regard to anticompetitive practices that are not capable of affecting trade between Member States. In addition, within the scope of the latter provisions, that law must be applied in a manner consistent with the Charter.

35 Lastly, that court states that the documents at issue in the present cases concern the commercial activity of the undertakings subject to the inspection measures. In the present case, every email is institutional in nature, inasmuch as it is the sole property of those undertakings, which unilaterally impose on their employees the terms on which that medium is to be used for the duration of the employment relationship which binds them. Moreover, in accordance with the internal rules of those undertakings, that email is limited to functional use. Its use for the employee's personal and private purposes is therefore prohibited.

36 The applicants in the main proceedings, on the other hand, submit that the emails of their employees must be protected as 'correspondence' and that such documents cannot be seized as part of an investigation into anticompetitive practices prohibited by Articles 101 and 102 TFEU. In the alternative, they submit that the seizure of those emails, in any event, requires the prior authorisation of an investigating judge.

37 It was in those circumstances that, in each of the actions before it, the Tribunal da Concorrência, Regulação e Supervisão (Competition, Regulation and Supervision Court) decided to stay the proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:

'[(1)] Do the business records at issue in this case, which are transmitted by email, constitute "correspondence" for the purposes of Article 7 of the [Charter]?

[(2)] Does Article 7 of the [Charter] preclude business records arising from e-mail communications between managers and employees of undertakings from being seized in the course of an investigation into agreements and practices prohibited under Article 101 TFEU (ex Article 81 TEC)?

[(3)] Does Article 7 of the [Charter] preclude such business records from being seized on the prior authorisation of a judicial authority, in this case the Public Prosecutor's Office, which is responsible for representing the State, defending the interests determined by law, bringing criminal prosecutions on the basis of the principle of legality and defending democratic legality in accordance with the Constitution [of the Portuguese Republic], and which operates independently of the other central, regional and local authorities?'

Procedure before the Court

38 By decision of 14 June 2023, the President of the Court decided, pursuant to Article 54(2) of the Rules of Procedure of the Court of Justice to join Cases C-258/23, C-259/23 and C-260/23 for the purposes of the written and oral procedure, and the judgment.

39 On 5 March 2024, those joined cases were assigned to the Fourth Chamber of the Court, so that it could give judgment without a hearing, but with the benefit of an Opinion focusing on the third question referred for a preliminary ruling.

40 That Opinion was delivered on 20 June 2024, following which the oral part of the proceedings was closed.

41 On 9 October 2024, due to the departure of the Judge-Rapporteur, because his term of office had come to an end, the Court decided to reassign the present joined cases to a new Judge-Rapporteur.

42 Taking the view, in particular, that the question relating to the implications of the judgment of 4 October 2024, *Bezirkshauptmannschaft Landeck (Attempt to access personal data stored on a mobile telephone)* (C-548/21, EU:C:2024:830), for the answer to the third question referred in each of the present cases, deserved the attention of a Chamber sitting in extended composition, the Fourth Chamber of the Court, pursuant to Article 60(3) of the Rules of Procedure, requested the Court to refer those cases to the Grand Chamber.

43 On 18 March 2025, the Court decided to refer those cases to the Grand Chamber of the Court and reopened the oral part of the procedure.

Admissibility

44 The applicants in the main proceedings challenged the admissibility of the requests for a preliminary ruling in their entirety.

45 In the first place, they submit, in essence, that those requests do not satisfy the requirements laid down in Article 94 of the Rules of Procedure and that the questions referred are irrelevant.

46 First of all, in Case C-258/23, IMI submits that the referring court has failed to provide the Court of Justice with the information necessary for an understanding of the factual and legal context of the case in the main proceedings and to set out the legal issues which it raises. It argues, *inter alia*, that, since the referring court did not bring to the attention of the Court of Justice judgment No 91/2023 of the Tribunal Constitucional (Constitutional Court, Portugal) of 16 March 2023, Case No 559/2020, by which that court declared as unconstitutional the rule that the Competition Authority is authorised to search and seize emails opened with the consent of the Public Prosecutor's Office, there is no guarantee that the answer to be given by the Court of Justice to the questions referred will be as complete and useful as possible. Next, in Case C-259/23, Synlabhealth II also submits that the request for a preliminary ruling fails to mention a number of facts essential to the understanding of the dispute in the main proceedings, the applicable national provisions and the link between those provisions and the provisions of EU law for which an interpretation is sought. Lastly, in Case C-260/23, the companies of the SIBS group submit that the questions referred are irrelevant to the subject matter of that dispute, which involves assessing the lawfulness of the measures at issue in the light of Portuguese law, and not the Charter.

47 In that regard, it should be noted that, according to settled case-law, in the context of the cooperation between the Court of Justice and the national courts provided for in Article 267 TFEU, it is solely for the national court before which a dispute has been brought, and which must assume responsibility for the subsequent judicial decision, to determine, in the light of the particular circumstances of the case, both the need for a preliminary ruling in order to enable it to deliver judgment and the relevance of the questions which it submits to the Court of Justice. Consequently, where the questions submitted by the national court concern the interpretation of EU law, the Court of Justice is, in principle, bound to give a ruling (judgment of 24 July 2023, *Lin*, C-107/23 PPU, EU:C:2023:606, paragraph 61 and the case-law cited).

48 It follows that questions relating to EU law enjoy a presumption of relevance. The Court of Justice may refuse to rule on a question referred by a national court for a preliminary ruling only where it is quite obvious that the interpretation of EU law that is sought bears no relation to the actual facts of the main action or its purpose, where the problem is hypothetical, or where the Court

of Justice does not have before it the factual or legal material necessary to give a useful answer to the questions submitted to it (judgment of 24 July 2023, *Lin*, C-107/23 PPU, EU:C:2023:606, paragraph 62 and the case-law cited).

49 It should also be borne in mind that, according to settled case-law, which is now reflected in Article 94(a) and (b) of the Rules of Procedure, the need to provide an interpretation of EU law which will be of use to the national court makes it necessary for the national court to define the factual and regulatory context of the questions it is asking or, at the very least, to explain the factual hypotheses on which those questions are based. Furthermore, it is essential, as stated in Article 94(c) of the Rules of Procedure, that the request for a preliminary ruling itself contain a statement of the reasons which prompted the referring court or tribunal to enquire about the interpretation or validity of certain provisions of EU law, and the connection between those provisions and the national legislation applicable to the dispute in the main proceedings (judgment of 21 December 2023, *European Superleague Company*, C-333/21, EU:C:2023:1011, paragraph 59 and the case-law cited).

50 Moreover, the information provided in the order for reference must be such as to enable the Court not only to reply usefully but must also give the governments of the Member States and other interested parties an opportunity to submit observations pursuant to Article 23 of the Statute of the Court of Justice of the European Union (judgment of 21 December 2023, *European Superleague Company*, C-333/21, EU:C:2023:1011, paragraph 60 and the case-law cited).

51 In the present case, the requests for a preliminary ruling include sufficient information to enable the Court of Justice to understand both the legal and factual context of the disputes in the main proceedings and the meaning and scope of the questions referred for a preliminary ruling. In addition, the referring court has set out the reasons that led it to submit those requests to the Court of Justice and the link which, in its view, exists between the provisions of EU law, including those of the Charter referred to in those requests, and the provisions of Portuguese law applicable to the disputes in the main proceedings.

52 In that regard, it is apparent from the requests for a preliminary ruling that they seek clarification from the Court on the extent of the protection afforded by Article 7 of the Charter against measures for the seizure of business records resulting from email communications between managers and employees of undertakings, in a context which falls within the application of EU law and, in particular, of Articles 101 and 102 TFEU.

53 The interpretation which the Court of Justice will be required to give to the provisions of EU law referred to in the requests for a preliminary ruling will have an influence on the referring court's examination of the lawfulness of the seizure of documents carried out by the Competition Authority in the absence of a prior authorisation issued by a court.

54 Moreover, the gist of both the written observations and the oral submissions at the hearing highlights the fact that the interested parties had no difficulty in grasping the factual and legal context surrounding the questions put by the referring court, in understanding the meaning and scope of the underlying factual statements, in comprehending the reasons why that court considered it necessary to refer them and also, ultimately, in effectively setting out a complete and proper position on them.

55 The first ground of inadmissibility raised by the applicants in the main proceedings must therefore be rejected.

56 In the second place, in Case C-259/23, *Synlabhealth II* submits that, in the present case, the Competition Authority exceeded the limits of the warrant issued by the Public Prosecutor's Office when it carried out the inspections and seizures at the premises of that company and that it was not

heard on the questions referred for a preliminary ruling, in breach of the procedural requirements laid down by Portuguese law, which is why it brought an action challenging the order for reference. Given that not all of the circumstances of the case have yet been established, the Court of Justice should refuse to give a ruling or, at the very least, stay the proceedings pending the decision of the Tribunal da Relação de Lisboa (Court of Appeal, Lisbon, Portugal) in the appeal against the order for reference to the Court of Justice. In Case C-260/23, the companies of the SIBS group also submit that the reference for a preliminary ruling was made at a time when the facts of the dispute in the main proceedings had not yet been established or even discussed.

57 In that regard, it should be noted that it is for the national court to decide at what stage of the proceedings it is appropriate for it to refer a question for a preliminary ruling to the Court of Justice (see, to that effect, judgment of 17 July 2008, *Coleman*, C-303/06, EU:C:2008:415, paragraph 29 and the case-law cited).

58 Where, as here, the Court of Justice receives a request for an interpretation of EU law which is not manifestly unrelated to the reality or the subject matter of the dispute in the main proceedings and it has the necessary information in order to give appropriate answers to the questions put to it, it must reply to that request and is not required to consider the facts as presumed by the referring court or tribunal, a presumption which it is for the referring court or tribunal to verify subsequently if that should prove to be necessary (see, to that effect, judgment of 17 July 2008, *Coleman*, C-303/06, EU:C:2008:415, paragraph 31 and the case-law cited).

59 Consequently, the second ground of inadmissibility raised by the applicants in the main proceedings must also be rejected.

60 In the light of the foregoing, the questions referred for a preliminary ruling by the national court are admissible.

Substance

61 As a preliminary point, it is important to bear in mind that the scope of the Charter, in so far as the action of the Member States is concerned, is defined in Article 51(1) thereof, according to which the provisions of the Charter are addressed to the Member States only when they are implementing EU law. That provision confirms settled case-law, which states that the fundamental rights guaranteed in the legal order of the European Union are applicable in all situations governed by EU law, but not outside such situations (see judgments of 26 February 2013, *Åkerberg Fransson*, C-617/10, EU:C:2013:105, paragraph 19, and of 6 March 2025, *D.K. (Withdrawal of cases from a judge)*, C-647/21 and C-648/21, EU:C:2025:143, paragraph 38).

62 Since the disputes in the main proceedings concern the question of respect for fundamental rights during inspections carried out by a national competition authority as part of investigations into infringements of Articles 101 and 102 TFEU and, therefore, situations in which EU law is implemented, the provisions of the Charter are applicable.

The first question

63 By its first question, the referring court asks, in essence, whether Article 7 of the Charter must be interpreted as meaning that the concept of ‘communications’, within the meaning of that article, covers business emails exchanged between employees and managers of an undertaking by means of that undertaking’s messaging service.

64 It should be noted that, although the referring court has referred to the concept of ‘correspondence’, Article 7 now refers to the concept of ‘communications’. As is apparent from the

Explanations relating to the Charter of Fundamental Rights (OJ 2007 C 303, p. 17), the word ‘communications’ was substituted for the word ‘correspondence’ in order to take account of technical developments.

65 It is apparent from Article 52(3) of the Charter that, in so far as the Charter contains rights which correspond to rights guaranteed by the Convention for the Protection of Human Rights and Fundamental Freedoms, signed in Rome on 4 November 1950 (ECHR), the meaning and scope of those rights are to be the same as those laid down by that Convention. However, that provision does not preclude the grant of wider protection by EU law.

66 In that regard, it must be borne in mind that Article 7 of the Charter, relating to the right to respect for private and family life, contains rights corresponding to those guaranteed by Article 8(1) ECHR. In accordance with Article 52(3) of the Charter, Article 7 of the Charter is thus to be given the same meaning and the same scope as Article 8(1) ECHR, as interpreted by the case-law of the European Court of Human Rights (see, to that effect, judgments of 5 October 2010, *McB.*, C-400/10 PPU, EU:C:2010:582, paragraph 53; of 15 November 2011, *Dereci and Others*, C-256/11, EU:C:2011:734, paragraph 70; and of 17 December 2015, *WebMindLicenses*, C-419/14, EU:C:2015:832, paragraph 70).

67 It is apparent from the case-law of the European Court of Human Rights that communications from business premises, like those from a person’s home, may be understood in the concepts of ‘private ... life’ and ‘correspondence’ referred to in Article 8 ECHR. The European Court of Human Rights has stipulated that in order to ascertain whether those concepts are applicable, a reasonable expectation of protection and respect for private life was an important factor but not necessarily decisive (see ECtHR, 5 September 2017, *Bărbulescu v. Romania*, CE:ECHR:2017:0905JUD006149608, § 73 and the case-law cited).

68 Thus, since interception of telecommunications constitutes interference with the exercise of the right guaranteed by Article 8(1) ECHR, it also constitutes a limitation on the exercise of the corresponding right laid down in Article 7 of the Charter (judgment of 17 December 2015, *WebMindLicenses*, C-419/14, EU:C:2015:832, paragraph 71).

69 The Court has already held that the same applies to seizures of emails in the course of inspections at the professional or business premises of a natural person or the premises of a commercial company, which also constitutes interference with the exercise of the right guaranteed by Article 8 of the ECHR (judgment of 17 December 2015, *WebMindLicenses*, C-419/14, EU:C:2015:832, paragraph 72).

70 Furthermore, as the Advocate General observed in point 31 of the Opinion delivered on 20 June 2024, the classification of the emails as ‘correspondence’ within the meaning of Article 8(1) ECHR and, therefore, as ‘communications’ within the meaning of Article 7 of the Charter, is independent of whether or not they have already been received by the addressee, have been read, or are unread or deleted, or that the communication was sent from business premises or equipment (ECtHR, 11 January 2024, *Arregui v. Spain*, CE:ECHR:2024:0111JUD004254118, § 31 and the case-law cited), or using an electronic messaging service (ECtHR, 3 April 2007, *Copland v. the United Kingdom*, CE:ECHR:2007:0403JUD006261700, §§ 41 and 42), or whether the address of the sender or recipient is that of a legal person (ECtHR, 14 March 2013, *Bernh Larsen Holding AS and Others v. Norway*, CE:ECHR:2013:0314JUD002411708, § 106), or, indeed, whether or not their content is private in nature (ECtHR, 16 December 1992, *Niemietz v. Germany*, CE:ECHR:1992:1216JUD001371088, § 32 *in fine*).

71 Thus, the fact that, in view of its form or content, an email may be classified as ‘related to the business’ does not deprive it of the protection which Article 7 of the Charter guarantees for communications. In that regard, in the judgment of the European Court of Human Rights of 5 September 2017, *Bărbulescu v. Romania* (CE:ECHR:2017:0905JUD006149608, § 74), concerning a case in which private messages had been sent from an employer’s computer, it was held that an employer’s instruction to employees to refrain from any personal activities in the workplace, which included a ban on using company resources for personal purposes, did not affect the classification as ‘correspondence’ for the purposes of Article 8(1) ECHR.

72 Lastly, that protection also extends to personal data generated by the traffic of those business emails, which are also protected by Article 8 of the Charter (ECtHR, 16 October 2007, *Wieser and Bicos Beteiligungen GmbH v. Austria*, CE:ECHR:2007:1016JUD007433601, § 45).

73 It follows from the foregoing that Article 7 of the Charter must be interpreted as meaning that the concept of ‘communications’, within the meaning of that article, covers business emails exchanged between employees and managers of an undertaking by means of that undertaking’s messaging service.

The second and third questions

74 By its second and third questions, which it is appropriate to examine together, the referring court asks whether Article 7 of the Charter must be interpreted as precluding the seizure, authorised in advance by a judicial authority such as the Portuguese Public Prosecutor’s Office, which is autonomous and responsible, inter alia, for bringing criminal prosecutions in the public interest and defending democratic legality, of business emails, exchanged between employees and managers of an undertaking, during an inspection carried out by a competition authority as part of an investigation into infringements of Article 101 or Article 102 TFEU.

75 According to settled case-law, in the procedure laid down by Article 267 TFEU providing for cooperation between national courts and the Court of Justice, it is for the latter to provide the referring court with an answer which will be of use to it and enable it to determine the case before it. To that end, the Court should, where necessary, reformulate the questions referred to it. The Court may also find it necessary to consider provisions of EU law which the national court has not referred to in its questions (judgments of 20 March 1986, *Tissier*, 35/85, EU:C:1986:143, paragraph 9, and of 4 October 2024, *Bezirkshauptmannschaft Landeck (Attempt to access personal data stored on a mobile telephone)*, C-548/21, EU:C:2024:830, paragraph 60).

76 The fact that a national court has, formally speaking, worded a question referred for a preliminary ruling with reference to certain provisions of EU law does not prevent the Court of Justice from providing the national court with all the points of interpretation which may be of assistance in adjudicating on the case pending before it, whether or not that court has referred to them in its questions. In that regard, it is for the Court of Justice to extract from all the information provided by the national court, in particular from the grounds of the decision referring the questions, the points of EU law which require interpretation, having regard to the subject matter of the dispute (judgment of 4 October 2024, *Bezirkshauptmannschaft Landeck (Attempt to access personal data stored on a mobile telephone)*, C-548/21, EU:C:2024:830, paragraph 61 and the case-law cited).

77 In the present case, by its second and third questions, the referring court asks about the lawfulness of seizures of emails, exchanged between the employees and managers of an undertaking, carried out in the course of inspections conducted by the Competition Authority at that undertaking’s professional or business premises as part of an investigation for infringement of Articles 101 or 102 TFEU. More specifically, that court asks whether such seizures may be authorised by a judicial

authority, such as the Portuguese Public Prosecutor's Office, or whether they necessarily require the prior authorisation of a court.

78 Although the referring court merely asks the Court of Justice about the interpretation of Article 7 of the Charter, which recognises that every person has the right to respect for his or her private and family life, home and communications, in such a context, it should be noted that the documents covered by the seizures at issue in the main proceedings may concern not only 'communications' within the meaning of Article 7 of the Charter, but also personal data, protected by Article 8 of the Charter. The fact that the information gathered was provided as part of a professional activity does not mean that it cannot be characterised as personal data (see, to that effect, judgment of 3 April 2025, *Ministerstvo zdravotníctví (Data concerning the representative of a legal person)*, C-710/23, EU:C:2025:231, paragraph 22 and the case-law cited).

79 In that regard, it must also be borne in mind that the right to the protection of personal data is closely linked to the right to respect for private and family life enshrined in Article 7 of the Charter, which it supplements (see, to that effect, judgments of 9 November 2010, *Volker und Markus Schecke and Eifert*, C-92/09 and C-93/09, EU:C:2010:662, paragraph 47, and of 18 December 2025, *Storstockholms Lokaltrafik*, C-422/24, EU:C:2025:980, paragraph 40).

80 In those circumstances, in order to give a useful answer to the referring court, it is necessary to reformulate the second and third questions referred for a preliminary ruling and to take the view that, by those questions, that court asks, in essence, whether Articles 7 and 8 of the Charter must be interpreted as precluding the seizure, without prior authorisation issued by a court, of emails exchanged between the employees and managers of an undertaking during an inspection carried out by a national competition authority at the professional or business premises of undertakings suspected of having committed infringements of Article 101 or Article 102 TFEU.

81 As regards the scope of the rights recognised by the Charter, it should be borne in mind that the fundamental rights enshrined in Articles 7 and 8 of the Charter are not absolute rights, but must be considered in relation to their function in society (judgments of 21 June 2022, *Ligue des droits humains*, C-817/19, EU:C:2022:491, paragraph 112, and of 22 November 2022, *Luxembourg Business Registers*, C-37/20 and C-601/20, EU:C:2022:912, paragraph 45).

82 Article 52(1) of the Charter allows limitations to be imposed on the exercise of rights such as those enshrined in Articles 7 and 8 thereof, as long as the limitations are provided for by law, respect the essence of those rights and freedoms and, subject to the principle of proportionality, are necessary and genuinely meet objectives of general interest recognised by the European Union or the need to protect the rights and freedoms of others (judgments of 9 November 2010, *Volker und Markus Schecke and Eifert*, C-92/09 and C-93/09, EU:C:2010:662, paragraph 50, and of 8 December 2022, *Google (De-referencing of allegedly inaccurate content)*, C-460/20, EU:C:2022:962, paragraph 57 and the case-law cited).

83 In the present case, the view must be taken that the seizure of emails in the course of inspections at the professional or business premises of a natural person or at the premises of a commercial company constitutes a limitation on the exercise of the right to private life enshrined in Article 7 of the Charter (see, to that effect, judgment of 17 December 2015, *WebMindLicenses*, C-419/14, EU:C:2015:832, paragraph 72).

84 In addition, as regards emails exchanged between the managers and employees of an undertaking and business records derived therefrom, it appears that, in so far as those emails and records are also likely to contain personal data, the seizure carried out by a national competition

authority as part of an investigation also constitutes a limitation on the exercise of the right guaranteed by Article 8 of the Charter.

85 Such limitations are accordingly possible only if they are provided for by law, if they respect the essence of those rights, if they genuinely meet objectives of general interest recognised by the European Union and if they respect the principle of proportionality.

86 In the first place, as regards the requirement relating to observance of the principle of legality, it appears, in the present case, to be satisfied. It should be noted that it is common ground that the measures at issue in the disputes in the main proceedings are based on Articles 18 to 21 of the Law on Competition, which allow, inter alia, the Competition Authority to conduct operations, at the premises of undertakings suspected of having committed infringements of Articles 101 and 102 TFEU, to ‘search for, examine, retrieve and seize written extracts and other documentation ... irrespective of the medium on which they are stored, whenever such steps are necessary in order to obtain evidence’.

87 In the second place, as regards respect for the essence of the fundamental rights enshrined in Articles 7 and 8 of the Charter, it must be observed that, although measures for the search and seizure of documents, such as those carried out in the disputes in the main proceedings, involve access to communications within the meaning of Article 7 thereof, they seek exclusively to obtain access to the content of emails and electronic messaging services which relate to the subject matter of the investigation as defined in the inspection decision. In addition, those measures concern emails exchanged by means of the business messaging service of the undertakings concerned and documents and personal data of the natural persons employed by those undertakings, which are limited, in principle, to aspects of the professional lives of those natural persons, to the exclusion of information relating to their private and family life, within the meaning of Article 7 thereof.

88 Furthermore, it appears that the seizure of the business communications of the managers and employees of an undertaking which is the subject of an investigation does not, as a general rule, entail either the unlimited gathering of personal data or generalised access to such data, since the gathering of the data contained in those communications is restricted to data linked to the anticompetitive conduct covered by the initiation of the Competition Authority’s investigation. Furthermore, those data may not be used for purposes other than those of identifying that conduct. It follows that, in so far as, in compliance with the relevant provisions of EU law, including the GDPR, national legislation limits the purposes of the processing of the data gathered and lays down rules governing that processing, including the retention and transfer of those data, the seizure of the emails at issue in the disputes in the main proceedings cannot be regarded as being such as to interfere with the essence of Article 8 of the Charter.

89 In those circumstances, subject to the checks to be carried out by the referring court, it appears that the seizure of the documents referred to in the disputes in the main proceedings does not adversely affect the essence of the fundamental rights enshrined in Articles 7 and 8 of the Charter.

90 In the third place, as regards the issue whether, in the present case, those interferences meet an objective of general interest recognised by the Union, within the meaning of Article 52(1) of the Charter, it should be noted that the inspections and seizures of communications and other documents and media carried out by the national competition authorities when they apply Articles 101 or 102 TFEU, in accordance with Article 3(1) and Article 5 of Regulation No 1/2003, have the objective of detecting practices contrary to those provisions. The investigative powers of the national competition authorities are thus intended to enable them to perform their task of ensuring that the competition rules are applied in the internal market, the function of those rules being to

prevent competition from being distorted to the detriment of the public interest, individual undertakings and consumers, thereby ensuring economic well-being in the European Union (see, to that effect and by analogy, judgment of 22 October 2002, *Roquette Frères*, C-94/00, EU:C:2002:603, paragraph 42).

91 As is apparent, in essence, from Protocol (No 27) on the internal market and competition annexed to the FEU Treaty and the EU Treaty, the internal market, as defined in Article 3 TEU and Article 26(2) TFEU, includes a system ensuring that competition is not distorted, which is indispensable to the functioning of that market (see, to that effect, judgment of 17 February 2011, *TeliaSonera Sverige*, C-52/09, EU:C:2011:83, paragraph 20; of 22 March 2022, *bpost*, C-117/20, EU:C:2022:202, paragraph 46; and of 22 March 2022, *Nordzucker and Others*, C-151/20, EU:C:2022:203, paragraph 51). The role of the national competition authorities in the effectiveness of that system, and their contribution to the implementation of Articles 101 and 102 TFEU, which are, in accordance with settled case-law, public policy provisions (see, to that effect, judgment of 21 December 2023, *International Skating Union v Commission*, C-124/21 P, EU:C:2023:1012, paragraph 192 and the case-law cited), is essential in that regard. The guarantee of undistorted competition must therefore be regarded as being an objective of general interest recognised by the Union, within the meaning of Article 52(1) of the Charter.

92 In the fourth place, as regards respect for the principle of proportionality, according to settled case-law, the proportionality of the measures which result in interference with the rights guaranteed in Articles 7 and 8 of the Charter requires compliance not only with the requirements of appropriateness and of necessity but also with that of the proportionate nature of those measures in relation to the objective pursued (judgment of 22 November 2022, *Luxembourg Business Registers*, C-37/20 and C-601/20, EU:C:2022:912, paragraph 63 and the case-law cited).

93 The limitations that may be imposed on the rights and freedoms enshrined in the Charter apply only in so far as is strictly necessary, it being understood that, where there is a choice between several measures appropriate to meeting the legitimate objectives pursued, recourse must be had to the least onerous. In addition, an objective of general interest may not be pursued without having regard to the fact that it must be reconciled with the fundamental rights affected by the measure at issue, by properly balancing that objective of general interest against the rights at issue, in order to ensure that the disadvantages caused by that measure are not disproportionate to the aims pursued. Thus, the possibility of Member States justifying a limitation of the rights guaranteed by Articles 7 and 8 of the Charter must be assessed by measuring the seriousness of the interference which such a limitation entails and by verifying that the importance of the objective of general interest pursued by that limitation is proportionate to that seriousness (judgments of 22 November 2022, *Luxembourg Business Registers*, C-37/20 and C-601/20, EU:C:2022:912, paragraph 64, and of 8 December 2022, *Orde van Vlaamse Balies and Others*, C-694/20, EU:C:2022:963, paragraph 41).

94 Furthermore, in order to satisfy the proportionality requirement, the legislation in question entailing the interference must also lay down clear and precise rules governing the scope and application of the measures provided for and imposing minimum safeguards, so that the data subjects have sufficient guarantees to protect effectively their personal data against the risk of abuse. In particular, it must specify the circumstances and conditions under which a measure involving the processing of such data may be taken, thereby ensuring that the interference is limited to what is strictly necessary (see, to that effect, judgment of 22 November 2022, *Luxembourg Business Registers*, C-37/20 and C-601/20, EU:C:2022:912, paragraph 65 and the case-law cited).

95 In the present case, first, the powers of investigation and seizure of electronic communications, documents and other data related to the business by the national competition authorities are

intended to detect the existence of anticompetitive practices prohibited by Articles 101 and 102 TFEU and are, consequently, appropriate for contributing to the attainment of the objective of general interest, referred to in paragraph 91 above, consisting in the preservation of undistorted competition in the internal market. The importance of that objective may justify an interference with the rights guaranteed in Articles 7 and 8 of the Charter.

96 Second, as regards the requirement of necessity, it must be borne in mind that it will be met where the objective pursued by the measures at issue cannot reasonably be achieved just as effectively by other means less restrictive of the fundamental rights of data subjects, in particular the rights to respect for private life and to the protection of personal data guaranteed in Articles 7 and 8 of the Charter (judgments of 26 January 2023, *Ministerstvo na vatreshnite raboti (Recording of biometric and genetic data by the police)*, C-205/21, EU:C:2023:49, paragraph 126, and of 4 October 2024, *Bezirkshauptmannschaft Landeck (Attempt to access personal data stored on a mobile telephone)*, C-548/21, EU:C:2024:830, paragraph 88).

97 In that regard, it appears that, in the investigation and detection of anticompetitive practices contrary to Articles 101 and 102 TFEU, no other means which are as effective and less prejudicial to the rights to respect for communications and to the protection of personal data present themselves as a satisfactory alternative to the seizure of documents resulting from emails exchanged between the managers and employees of the undertaking targeted by inspections carried out by a competition authority.

98 As the Advocate General stated, in essence, in point 21 of her Opinion delivered at the sitting on 23 October 2025, emails exchanged in a business context through messaging services are one of the main sources available to the competition authorities for detecting the existence of anticompetitive conduct. The right of a competition authority to make copies of sets of emails thus forms part of the supervisory powers available to that authority (see, by analogy, as regards the power conferred on the Commission by Article 20(2)(b) of Regulation No 1/2003, judgment of 16 July 2020, *Nexans France and Nexans v Commission*, C-606/18 P, EU:C:2020:571, paragraph 63). In that regard, Article 32 of Directive 2019/1 includes electronic messages among the evidence to be considered admissible before national competition authorities. Depriving those authorities, as a matter of principle, of the power to seize such electronic communications related to the business would be liable to undermine the effective pursuit of the fight against cartels and abuses of dominant positions within the internal market required by Articles 101 and 102 TFEU.

99 However, whilst Member States may deem it necessary to resort to inspections and seizures to establish material evidence of unlawful conduct, their legislation and practice in this area must provide adequate and sufficient safeguards against abuse (see, to that effect, ECtHR, 25 February 1993, *Funke v. France*, CE:ECHR:1993:0225JUD001082884, § 57, and ECtHR, 21 December 2010, *Société Canal Plus and Others v. France*, CE:ECHR:2010:1221JUD002940808, § 54 *in fine*).

100 Third, as regards the proportionality of the limitation on the exercise of the rights enshrined in Articles 7 and 8 of the Charter resulting from the seizure of the emails, it must be assessed in the context in which such a limitation occurs, by weighing, in each case, all the relevant factors of the individual case (see, to that effect, judgment of 4 October 2024, *Bezirkshauptmannschaft Landeck (Attempt to access personal data stored on a mobile telephone)*, C-548/21, EU:C:2024:830, paragraph 89).

101 As regards the limitation brought about by seizures carried out as part of inspections conducted by a competition authority, such factors include the gravity of the restriction thus imposed on the exercise of the fundamental right in question and the circumstances in which it occurred.

102 As regards the gravity of the restriction produced by the legislation at issue in the main proceedings, which permits the seizure, without prior authorisation issued by a court, by the national competition authority, of emails as part of an investigation concerning practices contrary to Articles 101 and 102 TFEU, it should be noted that the seizure of business correspondence by a national competition authority is generally subject to procedural safeguards intended to ensure, *inter alia*, the security, integrity and confidentiality of those data. As the Advocate General observed in point 33 of her Opinion delivered at the sitting on 23 October 2025, any investigation carried out by the national competition authorities must be based on a duly reasoned inspection decision, which must rely on reasonable suspicions that an undertaking has acted in breach of the competition rules laid down by the FEU Treaty. As regards the seizure of emails, when the investigators use computer investigation software, the indexation procedure which precedes the search for commercial information relevant to the investigation must be carried out using keywords defined in relation to the predetermined subject matter of the investigation.

103 As regards the circumstances in which the limitation on the exercise of the fundamental right in question occurred, it must be borne in mind that a distinction must, in principle, be drawn between a situation in which the inspection is carried out at the business premises of the undertakings or associations of undertakings in question and that in which the inspection is carried out at other premises, including the private homes of natural persons.

104 Although the fundamental right to the inviolability of a person's home is a general principle of EU law which is now expressed in Article 7 of the Charter, and which corresponds to Article 8 ECHR, the fact remains that that interference by a public authority may go further when it concerns professional or commercial premises or activities (see, to that effect, judgment of 18 June 2015, *Deutsche Bahn and Others v Commission*, C-583/13 P, EU:C:2015:404, paragraphs 19 and 20 and the case-law cited).

105 The powers of investigation vested in the competition authorities are, in principle, strictly defined, encompassing, *inter alia*, the exclusion of non-business documents from the scope of the investigation, the right to legal assistance, the preservation of the confidentiality of correspondence between legal counsel and clients, the obligation to state reasons for the inspection decision and the option of bringing proceedings before the EU courts (see, to that effect, judgment 18 June 2015, *Deutsche Bahn and Others v Commission*, C-583/13 P, EU:C:2015:404, paragraph 31 and the case-law cited). It should be recalled, in that context, that national competition authorities are required, *inter alia*, to comply with the GDPR in the investigations which they carry out.

106 It is also apparent from the case-law of the European Court of Human Rights relating, in particular, to Article 8 ECHR that, in relation to inspections at the business premises of an undertaking, the fact that prior authorisation for inspection has not been granted by a court, which could have circumscribed or reviewed the conduct of that inspection, may be counterbalanced by *ex post facto* judicial review of the legality and necessity of such a measure of inquiry, provided that that review is effective in the particular circumstances of the case in question. This means that the persons concerned must be able to obtain effective judicial review, both in fact and in law, of the measure at issue and its conduct. Where an operation found to be irregular has already taken place, the remedy or remedies available must provide the person concerned with appropriate redress (see, to that effect, judgment of 9 March 2023, *Casino, Guichard-Perrachon and AMC v Commission*, C-690/20 P, EU:C:2023:171, paragraph 38 and the case-law of the European Court of Human Rights cited).

107 Furthermore, it should be noted that, in accordance with the considerations referred to above relating to Articles 7 and 8 of the Charter, the provisions of EU law concerning the implementation of

the competition rules do not require a court to grant prior authorisation to an inspection carried out at business premises. In that regard, Article 20(6) and (7) of Regulation No 1/2003 and Article 6(3) of Directive 2019/1, concerning inspections conducted at the business premises of undertakings by the Commission and the national competition authorities respectively, do not require prior authorisation by a national court or an independent administrative body, even where emails are seized, but refer, in that respect, to the obligations laid down by national law by allowing Member States to require authorisation from a judicial authority for the purpose of exercising the powers of inspection of the national competition authorities.

108 It follows from all those considerations that Articles 7 and 8 of the Charter do not, in principle, preclude legislation of a Member State under which, as part of an investigation into an alleged infringement of Article 101 or Article 102 TFEU, the national competition authority seizes, at professional or business premises, emails the content of which relates to the subject matter of the inspection without having prior authorisation issued by a court.

109 However, it must be stated, first, that, in the absence of such prior authorisation issued by a court, the protection of individuals against arbitrary interference by public authorities with the rights guaranteed by Articles 7 and 8 of the Charter requires a legal framework and a strict limitation of the measures at issue. Thus, both the inspection and the seizure will be compatible with those provisions only if domestic legislation and practice provide adequate and sufficient safeguards against abuse and arbitrariness (see, to that effect, judgment of 17 December 2015, *WebMindLicenses*, C-419/14, EU:C:2015:832, paragraph 77). Such safeguards must take the form of a full *ex post* judicial review of the measures at issue. As is apparent from the settled case-law referred to in paragraph 106 above, that review must provide the data subjects with appropriate redress, which also allows the admissibility of the evidence gathered to be assessed.

110 In the present case, it is apparent from the order for reference that the inspections and seizures did not take place in the absence of any prior authorisation procedure, inasmuch as they were authorised by a judicial authority, namely by the Portuguese Public Prosecutor's Office, which, in accordance with the Constitution of the Portuguese Republic, is independent of the other bodies of the central, regional and local authority and is responsible, *inter alia*, for bringing criminal prosecutions in the public interest and defending democratic legality. The authorisation granted by that judicial authority appears likely to contribute to the strict legal framework for the inspections and seizures carried out by the national competition authority, in particular as regards the determination of their appropriateness, duration and material scope.

111 Thus, where, as in the main proceedings, prior authorisation has been granted not by a court but by the Public Prosecutor's Office, it is of paramount importance that such *ex post* judicial review proceedings be open to the data subjects and that they fully meet the requirements set out in paragraphs 106 and 109 above.

112 Second, it is appropriate to express a reservation with regard to inspections leading to the seizure of mobile telephones, computers or any other computer storage medium belonging, not to the undertakings whose premises are being inspected, but to natural persons such as their managers and employees.

113 In the present case, the referring court stated that the email system at issue in the main proceedings is 'limited to functional use' and that its use for the employees' personal and private purposes is 'prohibited' by the internal rules of the undertakings in question. Although the requests for a preliminary ruling refer to a search carried out in the employees' email or electronic messaging services, they do not, however, specify the media on which the emails at issue were stored, to which

the inspectors were able to gain access. It cannot therefore be ruled out, on reading the warrant issued by the Portuguese Public Prosecutor's Office, which refers to 'any computer storage medium or computer', that the media concerned included mobile telephones, computers or other computer storage media belonging not to those undertakings but to their managers and employees.

114 If, during inspections conducted by a competition authority at the business premises of an undertaking, investigators are required to seize mobile telephones, computers, or any other computer storage medium belonging not to that undertaking but to its managers and employees, access to the data contained in those devices must, where appropriate after being sealed, be subject to prior review by a court or an independent administrative body.

115 Since such devices may be used simultaneously for private purposes and for professional or business purposes, access to those devices is likely to concern, depending on the content of those devices, not only traffic and location data, but also photographs and the internet browsing history on those devices, or even the content of the private communications made with those devices (see, to that effect, judgment of 4 October 2024, *Bezirkshauptmannschaft Landeck (Attempt to access personal data stored on a mobile telephone)*, C-548/21, EU:C:2024:830, paragraph 92).

116 Thus, access to such a set of data is liable to allow very precise conclusions to be drawn concerning the private life of the data subject, such as his or her everyday habits, permanent or temporary places of residence, daily or other movements, the activities carried out, the social relationships of that data subject and the places he or she frequents socially. In addition, it cannot be ruled out that those data may fall within special categories of data, within the meaning of Article 9 of the GDPR. Access to retained data in such devices may therefore give rise to serious, or even particularly serious, interference with the fundamental rights guaranteed by Articles 7 and 8 of the Charter (see, to that effect, judgment of 4 October 2024, *Bezirkshauptmannschaft Landeck (Attempt to access personal data stored on a mobile telephone)*, C-548/21, EU:C:2024:830, paragraphs 93 to 95).

117 It is essential – in particular in order to ensure that the principle of proportionality is observed in each specific case by balancing all the relevant factors – that, where access to personal data by the competent national authorities carries the risk of serious, or even particularly serious, interference with the fundamental rights of the data subject, that access be subject to a prior review carried out either by a court or by an independent administrative body (judgment of 4 October 2024, *Bezirkshauptmannschaft Landeck (Attempt to access personal data stored on a mobile telephone)*, C-548/21, EU:C:2024:830, paragraph 102).

118 That prior review requires that the court or independent administrative body entrusted with carrying it out must have all the powers and provide all the guarantees necessary in order to reconcile the various legitimate interests and rights at issue. In particular, as regards an investigation conducted by a competition authority, it is a requirement of such a review that that court or body must be able to strike a fair balance between, on the one hand, the legitimate interests relating to the needs of the investigation and, on the other hand, the fundamental rights to respect for private life and protection of personal data of the persons whose data are concerned by the access (see, to that effect and by analogy, judgment of 4 October 2024, *Bezirkshauptmannschaft Landeck (Attempt to access personal data stored on a mobile telephone)*, C-548/21, EU:C:2024:830, paragraph 103).

119 In that regard, it should be added that it is, in principle, for national law alone to determine the rules relating to the admissibility of evidence gathered, provided, however, that those rules are no less favourable than the rules governing similar domestic actions (the principle of equivalence) and do not render impossible in practice or excessively difficult the exercise of rights conferred by EU law

(the principle of effectiveness) (see, to that effect, judgment of 6 October 2020, *La Quadrature du Net and Others*, C-511/18, C-512/18 and C-520/18, EU:C:2020:791, paragraphs 222 to 225).

120 It follows from all the foregoing considerations that Articles 7 and 8 of the Charter must be interpreted as not precluding the seizure, without prior authorisation issued by a court, of emails exchanged between the employees and managers of an undertaking during an inspection carried out by a national competition authority at the professional or business premises of undertakings suspected of having committed infringements of Article 101 or Article 102 TFEU, provided that a strict legal framework for the powers of that authority, and adequate and sufficient safeguards against abuse and arbitrariness, such as effective *ex post* judicial review of the measures at issue, are provided for.

Costs

121 Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the referring court, the decision on costs is a matter for that court. Costs incurred in submitting observations to the Court, other than the costs of those parties, are not recoverable.

On those grounds, the Court (Grand Chamber) hereby rules:

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

must be interpreted as meaning that the concept of ‘communications’, within the meaning of that article, covers business emails exchanged between employees and managers of an undertaking by means of that undertaking’s messaging service.

2. Articles 7 and 8 of the Charter of Fundamental Rights

must be interpreted as not precluding the seizure, without prior authorisation issued by a court, of emails exchanged between the employees and managers of an undertaking during an inspection carried out by a national competition authority at the professional or business premises of undertakings suspected of having committed infringements of Article 101 or Article 102 TFEU, provided that a strict legal framework for the powers of that authority, and adequate and sufficient safeguards against abuse and arbitrariness, such as effective *ex post* judicial review of the measures at issue, are provided for.

[Signatures]

* Language of the case: Portuguese.