



PRESS RELEASE No 104/26

Luxembourg, 16 July 2026

Judgment of the Court 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

Inspections by a competition authority: EU law does not preclude the seizure, without prior authorisation issued by a court, of business emails exchanged between the employees and managers of undertakings subject to an investigation

Nevertheless, national law must lay down a strict framework for the powers of the competition authority, and adequate and sufficient safeguards against abuse and arbitrariness, in particular through effective ex post judicial review

As part of an investigation into anticompetitive practices, the Portuguese competition authority seized, from the premises of the undertakings under investigation, emails exchanged between the employees of those undertakings. The undertakings contested the seizure of emails, arguing that it should have been authorised by an investigating judge rather than by the Public Prosecutor's Office. The Portuguese court hearing the cases referred the matter to the Court of Justice.

The Court considers that the seizures carried out constitute limitations not only on the right to respect for private and family life, but also on the right to the protection of personal data. Those limitations appear nevertheless to be justified by the general interest objective of preserving undistorted competition. They also appear to be proportionate. It follows that **EU law does not, in principle, preclude** legislation of a Member State under which, **as part of an investigation into an alleged infringement of competition rules**, 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**.

However, in the absence of prior authorisation issued by a court, such seizures must be **provided for by law, strictly limited and subject to full ex post judicial review**. Furthermore, where documents are seized from mobile telephones, computers or other computer storage media used for both private and professional purposes, **access to the data they contain may constitute a serious, or even particularly serious, interference with the fundamental rights at issue**. In such cases, **access to such data must be subject to prior review by a court or by an independent administrative body**.

As part of an investigation into infringements of competition law, ¹ the Portuguese authorities seized business records arising from the emails exchanged between the employees and the managers of the undertakings under investigation. The undertakings objected, arguing that their right to the confidentiality of communications ² had been breached and that it was for 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.

First, the Court considers that **emails related to the business**, exchanged between employees and managers of an undertaking by means of that undertaking's messaging service, **fall within the scope of communications protected by the right to respect for private and family life**. 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 that protection.

Next, the Court emphasises that the seizure of the documents at issue by the Portuguese competition authority **may concern not only the right to respect for communications, but also the right to protection of personal data**.³ In that regard, it notes that the seizure of emails in the course of inspections at professional premises clearly constitutes a **limitation of the exercise** of those rights.

Nevertheless, the Court recalls that such limitations may be permitted if they are provided for by law, if they respect the essence of the rights concerned, if they meet objectives of general interest and if they are proportionate.

The Court considers that **those conditions appear to be satisfied in the present case**. It notes, in particular, that the authorities **do not have unlimited or generalised access** to the content of emails or electronic messaging services, and that **the data** contained in such communications **may not be used for purposes other than identifying the anticompetitive conduct under investigation**, so that the essence of the rights appears to be respected. It considers that **the guarantee of undistorted competition is an objective of general interest recognised by the European Union**.

As regards the proportionality of the measure, the Court also considers that the importance of that **objective may justify an interference with the rights at issue and that no other means** that are as effective and less prejudicial to those rights present themselves as a **satisfactory alternative**. As regards the proportionality of the restriction on the exercise of the rights in question – more specifically, its **gravity**, arising from the fact that the seizure took place without prior authorisation issued by a court – the Court observes **that such a seizure is generally subject to procedural safeguards** intended to ensure, *inter alia*, the security, integrity and confidentiality of those data. Furthermore, 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.

However, the Court points out that, **in the absence of prior authorisation issued by a court**, the protection of individuals against abuse and arbitrariness requires a **legal framework and a strict limitation of the measures at issue**, and safeguards in the form of a **full ex post judicial review**. The Court adds that, in the cases under consideration, the inspections and seizures were authorised by the Portuguese Public Prosecutor's Office, which is an independent judicial authority. Its authorisation appears likely to contribute to the strict legal framework for the inspections and seizures carried out, in particular as regards the determination of their appropriateness, duration and material scope.

Finally, the Court expresses a reservation: it cannot be ruled out that the media on which the emails at issue were stored and to which the inspectors were able to gain access included **mobile telephones, computers or other computer storage media belonging to the managers and employees of the undertakings** under investigation. Since such devices may be used simultaneously for private purposes and for professional or business purposes, **access to retained data in them may give rise to a serious, or even particularly serious, interference with the fundamental rights at issue**, since all of those data may allow very precise conclusions to be drawn concerning the private life of the data subject. If that is the case, **access to such data must be subject to prior review by a court or an independent administrative body** that has all the powers and provides all the guarantees necessary in order to reconcile the various legitimate interests and rights at issue.

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.

Unofficial document for media use, not binding on the Court of Justice.

The [full text and, as the case may be, an abstract](#) of the judgment is published on the CURIA website on the day of delivery.

Press contact: Jacques René Zammit ☎ (+352) 4303 3355.

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¹ 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).

² Article 7 of the Charter of Fundamental Rights of the European Union, which states that 'everyone has the right to respect for his or her private and family life, home and communications'.

³ Protected by Article 8 of the Charter of Fundamental Rights.