



ОБЩ СЪД НА ЕВРОПЕЙСКИЯ СЪЮЗ  
TRIBUNAL GENERAL DE LA UNIÓN EUROPEA  
TRIBUNÁL EVROPSKÉ UNIE  
DEN EUROPÆISKE UNIONS RET  
GERICHT DER EUROPÄISCHEN UNION  
EUROOPA LIIDU ÜLDKOHUS  
ΓΕΝΙΚΟ ΔΙΚΑΣΤΗΡΙΟ ΤΗΣ ΕΥΡΩΠΑΪΚΗΣ ΕΝΩΣΗΣ  
GENERAL COURT OF THE EUROPEAN UNION  
TRIBUNAL DE L'UNION EUROPÉENNE  
CÚIRT GHINEARÁLTA AN AONTAIS EORPAIGH  
OPĆI SUD EUROPSKE UNIJE  
TRIBUNALE DELL'UNIONE EUROPEA

EIROPAS SAVIENĪBAS VISPĀRĒJĀ TIESA  
EUROPOS SĄJUNGOS BENDRASIS TEISMAS  
AZ EURÓPAI UNIÓ TÖRVÉNYSZÉKE  
IL-QORTI ĠENERALI TAL-UNJONI EWROPEA  
GERECHT VAN DE EUROPESE UNIE  
SĄD UNII EUROPEJSKIEJ  
TRIBUNAL GERAL DA UNIÃO EUROPEIA  
TRIBUNALUL UNIUNII EUROPENE  
VŠEOBECNÝ SÚD EURÓPSKEJ ÚNIE  
SPLOŠNO SODIŠČE EVROPSKE UNIJE  
EUROOPAN UNIONIN YLEINEN TUOMIOISTUIN  
EUROPEISKA UNIONENS TRIBUNAL

JUDGMENT OF THE GENERAL COURT (Fourth Chamber, sitting with five Judges)

10 June 2026 \*

(Law governing the institutions – Investigation by the European Public Prosecutor’s Office – Refusal by the Court of Auditors to lift the duty of confidentiality of persons called to be heard as witnesses in the investigation – Action for annulment – Challengeable act – Admissibility – Cooperation in good faith – Article 19 of the Staff Regulations – Interests of the Union)

In Case T-99/25,

**European Public Prosecutor’s Office**, represented by L. De Matteis and E. Farhat, acting as Agents,

applicant,

v

**European Court of Auditors**, represented by B. Schäfer and A-M. Feipel-Cosciug, acting as Agents,

defendant,

THE GENERAL COURT (Fourth Chamber, sitting with five Judges),

composed of G. De Baere, President, J. Svingens (Rapporteur), C. Mac Eochaidh, R. Meyer and D. Jočienė, Judges,

Registrar: S. Spyropoulos, Administrator,

having regard to the written part of the procedure,

further to the hearing on 10 March 2026,

\* Language of the case: English.

gives the following

### **Judgment**

- 1 By its action under Article 263 TFEU, the European Public Prosecutor’s Office (EPPO) seeks annulment of the statement of position of the European Court of Auditors, annexed to the letter communicated by the head of the latter’s legal service on 9 December 2024 (‘the contested statement of position’), which rejected the EPPO’s request of 26 September 2024, in the framework of an investigation in respect of various persons (‘the persons under investigation’), for the lifting of the duty of confidentiality of 12 officials of the European Union (‘the 12 officials’) so that they could be heard as witnesses in that investigation.

### **Background to the dispute**

- 2 On 14 July 2022, the European Anti-Fraud Office (OLAF) reported to the EPPO possible irregularities in the recruitment and establishment of a person who had become an official of the Court of Auditors.
- 3 The EPPO subsequently opened a case and, after examining the information received, it concluded that there was evidence that an offence falling within its competence, within the meaning of Article 26(1) of Council Regulation (EU) 2017/1939 of 12 October 2017 implementing enhanced cooperation on the establishment of the European Public Prosecutor’s Office (OJ 2017 L 283, p. 1) had been committed.
- 4 On 20 December 2022, in accordance with that same provision, the European Delegated Prosecutor in Luxembourg in charge of the case (‘the delegated prosecutor’) decided to open an investigation.
- 5 On 7 February 2023, taking into account, first, the inviolability of the premises, buildings and archives of the European Union, provided for in Articles 1 and 2 of Protocol (No 7) on the privileges and immunities of the European Union (OJ 2010 C 83, p. 266; ‘Protocol No 7’), which is enjoyed by the Court of Auditors, and, second, the immunity of officials and other servants of the European Union, recognised in Article 11 of that protocol, guaranteed to the persons under investigation, the delegated prosecutor proposed to the European Chief Prosecutor that a request be made to lift that inviolability and those immunities.
- 6 Between 13 February 2023 and 7 April 2024, the European Chief Prosecutor made repeated requests to the President of the Court of Auditors to lift the inviolability of the premises, buildings and archives of that institution and to lift the immunity of the persons under investigation.

- 7 In his replies of 15 March, 27 April, 23 May, 10 July and 1 September 2023, the President of the Court of Auditors stated that the limited information provided by the European Chief Prosecutor did not make it possible for him to accept the two requests. As regards the request to lift the immunity of the persons under investigation, he stated that the wish expressed by the European Chief Prosecutor, that those persons should not be informed of the decision concerning them prior to its adoption, could not be accepted. The President of the Court of Auditors also suggested a meeting with representatives of the EPPO in order to provide them with more information and communicated documents concerning the investigation.
- 8 On 13 October 2023, the President of the Court of Auditors, following his letter of 1 September 2023, in which he had stated that he intended to inform the persons under investigation so that they could present their comments and the Court of Auditors could then take a decision, informed the European Chief Prosecutor that those persons were available to submit written statements and to be heard, with their immunity being maintained.
- 9 In order to continue his investigation, the delegated prosecutor, by email of 26 September 2024 to the head of the legal service of the Court of Auditors, requested the communication of various documents concerning the investigation, in addition to those already sent, and also, in accordance with Article 19 of the Staff Regulations of Officials of the European Union ('the Staff Regulations'), the lifting of the duty of confidentiality of the 12 officials so that they could be heard as witnesses in the investigation, on the basis of Article 28(1) of Regulation 2017/1939.
- 10 By email of 24 October 2024, the head of the legal service of the Court of Auditors replied by providing some of the documents requested, while stating that the other documents requested had already been provided or did not exist. In addition, she reiterated the suggestion of a meeting between the EPPO and the Court of Auditors in order to clarify certain aspects relating to the investigation.
- 11 The following day, the delegated prosecutor, rejecting the idea of a meeting, enquired again about his request to the Court of Auditors to lift the duty of confidentiality made by the email of 26 September 2024.
- 12 On 9 December 2024, the Court of Auditors, by the contested statement of position, rejected the request to lift the duty of confidentiality of the 12 officials. First, it considered that, as with the request for the lifting of the immunity of the persons under investigation, the EPPO had not provided sufficient information and evidence on the suspicions of criminal offences alleged against the persons under investigation. The Court of Auditors thus considered that the lifting of the duty of confidentiality of those 12 officials would be contrary to the interests of the Union within the meaning of Article 19 of the Staff Regulations. Second, it observed that, most importantly, the request for the lifting of the duty of confidentiality would de facto circumvent the decision not to lift the immunity of

the persons under investigation. The Court of Auditors therefore concluded by stating that the investigation should be dismissed, in accordance with Article 39 of Regulation 2017/1939.

### **Forms of order sought**

- 13 The EPPO claims that the Court should annul the contested statement of position.
- 14 The Court of Auditors contends that the Court should:
  - principally, dismiss the action as inadmissible;
  - in the alternative, dismiss the action as unfounded;
  - order the EPPO to pay the costs.

### **Law**

#### *The pleas of inadmissibility raised by the Court of Auditors*

- 15 The Court of Auditors raises two pleas of inadmissibility, alleging, first, absence of a challengeable act and, second, absence of a legal interest in bringing proceedings.

#### *The first plea of inadmissibility: absence of a challengeable act*

- 16 The Court of Auditors submits that the contested statement of position is not a challengeable act for the purposes of Article 263 TFEU. That statement of position merely recalled the exchanges between it and the EPPO and explained that since it had not been provided with sufficient information to ensure that the requested measures would not harm the interests of the Union, it was not justified to lift the duty of confidentiality of the 12 officials.
- 17 The Court of Auditors adds that the EPPO based its request to lift the duty of confidentiality on Article 19 of the Staff Regulations, which concerns employment relations between EU institutions and their officials and not the prerogatives of investigative bodies and national judicial authorities. It is only a decision adopted by the competent appointing authority in the context of such an employment relationship that produces legal effects that may be subject to review by the Courts of the European Union, which is not the case in the matter at hand.
- 18 The EPPO disputes that plea of inadmissibility.
- 19 It should be observed that, in accordance with the first paragraph of Article 263 TFEU, the Courts of the European Union are to review the legality of acts of the

institutions, bodies, offices or agencies of the European Union ‘intended to produce legal effects vis-à-vis third parties’.

- 20 It follows that actions for annulment, provided for under Article 263 TFEU, are available in the case of all measures or provisions adopted by the institutions, bodies, offices and agencies of the European Union, whatever their nature or form, which are intended to have binding legal effects (see judgment of 15 July 2021, *FBF*, C-911/19, EU:C:2021:599, paragraph 36 and the case-law cited).
- 21 In order to ascertain whether a measure is intended to produce such effects and may, accordingly, form the subject matter of such an action, it is necessary to examine the substance of that measure and to assess those effects in the light of objective criteria, such as the content of that measure, taking into account, as appropriate, the context in which it was adopted and the powers of the institution, body, office or agency which adopted the measure, powers which should not be understood in the abstract but should be regarded as factors that inform the specific analysis of the content of that measure (see judgment of 13 February 2025, *Swissgrid v Commission*, C-121/23 P, EU:C:2025:83, paragraph 37 and the case-law cited).
- 22 In the present case, as regards, first of all, the context in which the contested statement of position was adopted, it should be observed that it was sent in response to the request to lift the duty of confidentiality of the 12 officials, which was submitted by the delegated prosecutor in accordance with Article 19 of the Staff Regulations on 26 September 2024 and renewed by him on 25 October 2024.
- 23 As regards, next, the powers of the author of the act, the delegated prosecutor could reasonably consider that the contested statement of position originated from the competent appointing authority, having regard, in particular, to the forwarding letter from the head of the legal service of the Court of Auditors, by which she communicated, ‘on behalf of the college of Members’ of the Court of Auditors, the latter’s position on the request to lift the duty of confidentiality of the 12 officials (see, by analogy, judgment of 19 January 1984, *Erdini v Council*, 65/83, EU:C:1984:24, paragraph 7).
- 24 Lastly, as regards the content of the contested statement of position, it should be observed that, contrary to what is asserted by the Court of Auditors, that statement of position does not merely recall the exchanges between it and the EPPO. In the final part of the contested position, the Court of Auditors, in essence, refused to lift the duty of confidentiality of the 12 officials, finding that the EPPO’s request did not provide sufficient reasoning and that a waiver of that kind would be contrary to the interests of the Union and amount to circumventing the procedure for lifting the immunity of the persons under investigation.
- 25 Accordingly, given that the delegated prosecutor, without such a lifting of the duty of confidentiality, for the purposes of Article 19 of the Staff Regulations, was unable to obtain the testimony of the 12 officials in order to seek to further his

investigation into the persons it concerned, it must be held that the contested statement of position produced legal effects vis-à-vis the EPPO. In fact, it deprived the EPPO of the possibility to exercise its investigative powers under Article 28(1) of Regulation 2017/1939.

- 26 That finding is not undermined by the argument of the Court of Auditors that, in essence, a decision adopted on the basis of Article 19 of the Staff Regulations may have an adverse effect only on an official in an action brought on the basis of Article 270 TFEU.
- 27 In that regard, it must be stated that if the argument of the Court of Auditors in that respect were to be accepted, that would imply that where an EU institution, agency, body, office or agency refuses to lift an official's duty of confidentiality on the basis of Article 19 of the Staff Regulations, a European delegated prosecutor would be prevented from exercising his or her powers under Article 28 of Regulation 2017/1939, without being able to challenge the lawfulness of such a refusal hindering his or her investigation before the Courts of the European Union.
- 28 Furthermore, it should be observed that the Court of Justice has already upheld the admissibility of an action, brought by a company on the basis of Article 263 TFEU, for annulment of a decision by the European Commission to refuse a request to waive an official's duty of confidentiality so that he could testify before a national court (see, to that effect, judgment of 18 February 1992, *Weddel v Commission*, C-54/90, EU:C:1992:75, paragraph 17).
- 29 It follows that the contested statement of position is a challengeable act that may be the subject of an action for annulment under Article 263 TFEU, such that the first plea of inadmissibility must be rejected.

*The second plea of inadmissibility: absence of a legal interest in bringing proceedings*

- 30 First, the Court of Auditors observes that on 13 February 2023 the European Chief Prosecutor, in accordance with Article 29(2) of Regulation 2017/1939, requested the lifting of the immunity of the persons under investigation, considering that step to be a prior and necessary measure for the proper conduct of the investigation.
- 31 In the absence of any lifting of the immunity of the persons under investigation, the annulment of the contested statement of position cannot procure any benefit to the EPPO. Any evidence gathered through the testimony of the 12 officials could not be used either to submit a new request for the lifting of immunity in the investigation or to have those persons tried and convicted.
- 32 In support of that argument the Court of Auditors refers to the principles established in the case-law and, in particular, in the order of 16 January 2024, *Kaili v Parliament and EPPO* (T-46/23, not published, EU:T:2024:14,

paragraph 22), in which the General Court held that the request to lift immunity is a preliminary and necessary measure, made available to the EPPO by the EU legislature, in order to ensure the effectiveness of the investigations where the immunity from which a person benefits is an obstacle to an investigation relating to him or her.

- 33 The Court of Auditors also refers to the judgment of 30 November 2021, *LR Ģenerālprokuratūra* (C-3/20, EU:C:2021:969, paragraphs 87 and 88), in which the Court of Justice held that if the authorities consider in an investigation, before the matter is brought before a court, that a suspect enjoys immunity, in accordance with Article 11 of Protocol No 7, in respect of acts which are the subject of their investigations, it is for those authorities to request that immunity be lifted since it precludes any use of evidence obtained for the purposes of trying and convicting the suspect for the act covered by that immunity.
- 34 Second, the Court of Auditors observes that Article 39 of Regulation 2017/1939 provides that the immunity from which a suspect benefits is to entail the dismissal of an investigation unless it has been lifted. It argues that the EPPO itself acknowledged in paragraph 43 of the application that it had not brought an action for annulment of the ‘decisions’ contained in the letters of the President of the Court of Auditors of 15 March and 27 April 2023. The Court of Auditors thus deduces that the EPPO allowed the period to bring an action to challenge ‘the non-lifting of immunity’ of the persons under investigation to expire and, 19 months after the letter of 13 February 2023, submitted a request to lift the duty of confidentiality of the 12 officials.
- 35 Third, the Court of Auditors argues that the fact that any testimony may provide evidence justifying a new request to lift the immunity of the persons under investigation is hypothetical and also contrary to Article 26 of Regulation 2017/1939, according to which it must be established, before initiating an investigation, that there are reasonable grounds to believe that an offence within the competence of the EPPO has been committed.
- 36 The EPPO disputes the second plea of inadmissibility.
- 37 It should be observed that, according to settled case-law, any action for annulment brought under Article 263 TFEU by a natural or legal person must be based on an interest on the part of the applicant in bringing proceedings. The existence of such an interest presupposes that annulment of the contested measure must be capable of procuring an advantage for that person (see judgment of 15 July 2025, *ECB and Commission v Corneli*, C-777/22 P and C-789/22 P, EU:C:2025:580, paragraph 86 and the case-law cited).
- 38 In the present case, it must be stated that even though the President of the Court of Auditors informed the European Chief Prosecutor in the letter of 23 May 2023 that the procedure would be launched for the adoption of a decision on the request to lift the immunity of the persons under investigation, the fact remains that there

is no such decision addressed to the European Chief Prosecutor in the case file in the present case, a decision which, moreover, as the President of the Court of Auditors himself stated in his letters of 27 April and 10 July 2023, had to be adopted by the Members of the Court of Auditors, assisted by its Secretary-General.

- 39 Furthermore, the Court of Auditors acknowledged at the hearing, in response to a question from the Court, that no explicit decision to refuse the request to lift the immunity of the persons under investigation had been adopted.
- 40 The argument, also put forward by the Court of Auditors at the hearing, that the letter from its President of 13 October 2023 is an implied decision to reject the request to lift the immunity of the persons under investigation, cannot be accepted. First, the letter in question is from the President of the Court of Auditors, who does not have the power to adopt such a decision, even one that is implied, as he himself indicated in the letters referred to in paragraph 38 above. Second, there is nothing in that letter to support a conclusion that it represents the final position of the Court of Auditors on the request to lift immunity submitted by the EPPO.
- 41 The same is true of the argument made by the Court of Auditors to the effect that the EPPO had acknowledged that it had not challenged the ‘decisions’ to refuse to lift the immunity of the persons under investigation set out in its President’s letters of 15 March and 27 April 2023. It is apparent from paragraph 38 above that the President of the Court of Auditors indicated that his letters could not contain such decisions.
- 42 It thus follows that, since no decision has been adopted to refuse to lift the immunity of the persons under investigation that adversely affects the EPPO, the Court of Auditors cannot legitimately raise an argument against the EPPO based on the expiry of a period for bringing an action against an act, whether explicit or implied, which has not become final and which has not been taken by the competent authority in the required form.
- 43 Furthermore, it should be added that even if the Court of Auditors had adopted a decision refusing to lift immunity in accordance with its own rules, it is not possible, contrary to what the latter body claims, to rule out a new request for a waiver of immunity being made by the European Chief Prosecutor, before a possible dismissal of the investigation.
- 44 In that regard, it should be observed that, first, in accordance with the procedure laid down in Article 39(1)(d) of Regulation 2017/1939, it is only where the European delegated prosecutor handling an investigation considers that prosecution has become impossible that, on the basis of a report he or she submits, the Permanent Chamber of the European Public Prosecutor’s Office is to decide to dismiss the case against a person on account of immunity that has been granted to him or her. Second, Article 39(2) of that regulation provides that ‘a decision in accordance with paragraph 1 shall not bar further investigations on the basis of

new facts which were not known to the EPPO at the time of the decision and which become known after the decision' and that 'the decision to reopen investigations on the basis of such new facts shall be taken by the competent Permanent Chamber'.

- 45 It should be found that Article 39(1)(d) of Regulation 2017/1939 cannot be interpreted as meaning that a refusal to lift the immunity of a person under investigation represents an automatic and definitive bar on the EPPO's continuing to investigate that person's conduct and does not permit it to renew its request while submitting additional evidence.
- 46 In addition, in explicitly providing for the possibility of initiating a new investigation in response to new facts, Article 39(2) of Regulation 2017/1939 reflects the principle that decisions adopted on the basis of the state of the file at a given time of the investigation may be re-examined when new factors come to light. To require, in that regard, that an investigation be dismissed in order to make it possible to submit a new request for the lifting of immunity would introduce a formality with no functional necessity and would be liable to undermine the effectiveness of the system of prosecution established by Regulation 2017/1939 in order to protect the financial interests of the European Union.
- 47 Accordingly, Article 39(1)(d) and (2) of Regulation 2017/1939 does not prevent a European delegated prosecutor, before finding that prosecution has become impossible and, therefore, proposing that an investigation be dismissed, from seeking additional evidence.
- 48 That finding is not called into question by the argument based on paragraphs 87 and 88 of the judgment of 30 November 2021, *LR Ġenerālprokuratūra* (C-3/20, EU:C:2021:969). It is apparent from those two paragraphs that if an investigation is closed without the immunity of the persons subject to that investigation having been waived, those persons cannot be tried and convicted for the acts covered by that immunity. However, that finding does not preclude the delegated prosecutor from gathering additional evidence so that the European Chief Prosecutor may supplement a pending request or, if such a request has been refused, from submitting a new one based on new facts. That evidence may subsequently be used for trying and convicting the persons covered by immunity, on the condition, however, that immunity has been lifted, at the latest, by the closure of the investigation, which may serve as the basis for prosecution in accordance with the law of the Member State of the European delegated prosecutor dealing with the case.
- 49 The same applies to the argument based on paragraph 22 of the order of 16 January 2024, *Kaili v Parliament and EPPO* (T-46/23, not published, EU:T:2024:14). In that regard, it is sufficient to observe that it is apparent from paragraph 48 above that the fact that a request to lift immunity is pending does not

preclude the delegated prosecutor from being able to gather additional evidence so that the European Chief Prosecutor may supplement that request.

- 50 Lastly, if the argument made by the Court of Auditors, according to which the EPPO had waited 19 months after submitting a request to waive the immunity of the persons under investigation to seek the lifting of the duty of confidentiality of the 12 officials, were to be understood as criticism of the EPPO for tardiness in making that request, it must be stated that that argument likewise cannot succeed.
- 51 It is apparent from the file that the President of the Court of Auditors stated on several occasions that the lack of sufficiently clear and precise information on the part of the EPPO as to the allegations of suspected offences directed against the persons under investigation prevented the Court of Auditors from being able to rule on the request to waive their immunity. In that context, it must be held that the European delegated prosecutor could, also 19 months after the submission of the request to lift immunity, validly request the waiver of the duty of confidentiality of the 12 officials in order to gather additional evidence that could possibly substantiate that request.
- 52 Accordingly, since the Court of Auditors has not yet adopted a final decision in due and proper form on the request to lift immunity, the EPPO retains a legal interest in bringing proceedings against the contested statement of position in so far as that position prevents it from gathering additional evidence that may enable it to substantiate the request to lift immunity or to find that there is no longer any need to continue the proceedings brought against the persons under investigation.
- 53 Furthermore, it should be stated that the assessment of the conduct and timing of investigations conducted by the EPPO falls within the discretion enjoyed by that latter body in the exercise of its investigative powers and cannot, as a rule, be called into question by the General Court.
- 54 Taking account of those factors, it must be held that the EPPO has a legal interest in bringing proceedings against the contested statement of position and that the second plea of inadmissibility must also be rejected.

### *Substance*

- 55 In support of its action, the EPPO raises five pleas in law, alleging, first, misuse of power, second, infringement of Article 13(2) TEU, third, infringement of Article 108(5) of Regulation 2017/1939, fourth, infringement of Article 6(1) of Regulation 2017/1939, and, fifth, in essence, infringement of Protocol No 7 and of the second sentence of the first paragraph of Article 19 of the Staff Regulations.
- 56 It is appropriate to begin by examining the fifth plea.
- 57 In support of that plea, the EPPO submits that the Court of Auditors, in the contested statement of position, confuses the situation of the persons under investigation and that of the 12 officials, given that the immunity provided for in

Protocol No 7 covers the former group and not the latter, who do not enjoy any particular immunity under EU law. Consequently, according to the EPPO, in essence, the hearing of those 12 officials could not be refused on the ground that it entailed a breach of the immunity of the persons under investigation but only on the ground that refusal was justified by an interest of the Union, for the purposes of the second sentence of the first paragraph of Article 19 of the Staff Regulations, which is not the case here.

- 58 The Court of Auditors disputes the strict distinction made by the EPPO between the lifting of the immunity of the persons under investigation and the lifting of the duty of confidentiality of the 12 officials and it reiterates that, since the immunity of those persons has not been waived, the lifting of the duty of confidentiality of those officials would have no impact on the investigation given the principles arising from the judgment of 30 November 2021, *LR Ģenerālprokuratūra* (C-3/20, EU:C:2021:969).
- 59 In addition, the Court of Auditors submits that, in any event, the restrictive interpretation of the concept of ‘interests of the Union’ put forward by the EPPO cannot be accepted. First, it argues that in paragraphs 139 and 140 of the judgment of 23 March 2022, *NV v eu-LISA* (T-661/20, EU:T:2022:154) the General Court acknowledged that the functioning and reputation of an institution may be taken into account in the application of Article 19 of the Staff Regulations. Second, since the necessary conditions for granting the lifting of the immunity of the persons under investigation are not met, it would be contrary to the interests of the Union to lift the duty of confidentiality of the 12 officials.
- 60 As a preliminary point it should be observed that the first sentence of Article 13(2) TEU provides that each EU institution is to act within the limits of the powers conferred on it in the Treaties, and in conformity with the procedures, conditions and objectives set out in them. According to the case-law, that provision reflects the principle of institutional balance, characteristic of the institutional structure of the European Union, a principle which requires that each of the institutions must exercise its powers with due regard for the powers of the other institutions. The second sentence of Article 13(2) TEU provides, in addition, that the EU institutions are to practice mutual sincere cooperation (see, to that effect, judgment of 9 April 2024, *Commission v Council (Signature of international agreements)*, C-551/21, EU:C:2024:281, paragraphs 62 and 63 and the case-law cited).
- 61 Next, in the first place, it should be stated that, as is apparent from paragraphs 45 and 52 above, the European delegated prosecutor was entitled to submit a request to lift the duty of confidentiality of the 12 officials, irrespective of whether a decision to reject the request to lift immunity had already been adopted or whether that request was still pending.
- 62 It follows that the link between the lifting of the duty of confidentiality of the 12 officials, who are not the subject of the investigation, and the lifting of the

immunity of the persons concerned by that investigation is of no relevance for assessing whether an interest of the Union is present, in terms of the second sentence of the first paragraph of Article 19 of the Staff Regulations. Indeed, the request to lift the duty of confidentiality concerns only the 12 officials, who could be heard as witnesses by the delegated prosecutor, but does not in any way concern the persons under investigation.

- 63 Accordingly, the Court of Auditors could not merely find, in essence, that since it had not granted the request to lift the immunity of the persons under investigation, it was also entitled not to accept the request to lift the duty of confidentiality of the 12 officials, while relying on the same reasoning, which was based, *inter alia*, on a lack of sufficient information to assess possible harm to the interests of the Union.
- 64 In fact, the Court of Auditors was required to carry out a separate assessment of that request to lift the duty of confidentiality, in the light of the second sentence of the first paragraph of Article 19 of the Staff Regulations, also taking into account the fact that it did not concern the same persons, did not pursue the same objective and did not have the same consequences as the request to lift the immunity of the persons under investigation.
- 65 In the second place, even if it were accepted that the link between lifting the duty of confidentiality of the 12 officials and lifting the immunity of the persons under investigation should be taken into account, it must be found that the ground given in the contested statement of position, according to which the request to lift the duty of confidentiality of the 12 officials would amount to a circumvention of the non-lifting the immunity of the persons under investigation and would, for that reasons, be contrary to the interests of the Union, misconstrues the concept of ‘interests of the Union’ set out in the second sentence of the first paragraph of Article 19 of the Staff Regulations.
- 66 It is apparent from the restrictive wording of that provision that the ‘interests of the Union’ which may justify a refusal of permission to disclose in legal proceedings work-related information must necessarily be interests of considerable importance which are vital to the European Union (see judgment of 13 June 2002, *Ferrer de Moncada v Commission*, T-74/01, EU:T:2002:158, paragraph 58 and the case-law cited; judgment of 23 March 2022, *NV v eu-LISA*, T-661/20, EU:T:2022:154, paragraph 142).
- 67 Accordingly, it must be found that the interpretation of the concept of ‘interests of the Union’ on which the Court of Auditors bases its refusal does not comply with the restrictive reading of that concept established by the case-law. The Court of Auditors could not legitimately maintain that the immunity enjoyed by the persons under investigation corresponded to a necessity that was linked to the protection of vital interests of the Union such as to justify its refusal to give permission to the 12 officials to testify in that investigation.

- 68 Furthermore, if that line of argument put forward by the Court of Auditors were to be accepted, that would amount to allowing any institution to which a request for the lifting of immunity has been made to assess the characterisation of the facts that are the subject matter of an investigation and to determine the conditions under which the EPPO is authorised to conduct that investigation, which would have the effect of depriving the EPPO of the possibility of fully exercising the powers conferred on it by Article 28(1) of Regulation 2017/1939.
- 69 On the contrary, it is in the very interests of the European Union to allow the EPPO to gather evidence throughout the investigation, including by means of testimony from EU officials, so that it may possibly decide to dismiss the case.
- 70 It should be added that the Court of Auditors' argument, according to which the restrictive interpretation of the concept of 'interests of the Union' put forward by the EPPO cannot be accepted, is based on a misreading of the judgment of 23 March 2022, *NV v eu-LISA* (T-661/20, EU:T:2022:154).
- 71 The General Court, in paragraph 140 of the judgment of 23 March 2022, *NV v eu-LISA* (T-661/20, EU:T:2022:154), merely found that the second sentence of the first paragraph of Article 19 of the Staff Regulations could cover a situation in which an official wished to disclose in legal proceedings facts related to a conflictual relationship in the workplace which were not, by their nature, covered by professional secrecy, but which could affect the functioning and reputation of an institution. However, it did not find that possible harm to the functioning or reputation of an institution could constitute a justification for refusing to lift the duty of discretion of the official in question on the basis of protecting the interests of the Union.
- 72 Moreover, it must be stated that in paragraph 142 of the judgment of 23 March 2022, *NV v eu-LISA* (T-661/20, EU:T:2022:154), the Court points to the restrictive wording of that provision, under which the 'interests of the Union', which may justify a refusal of permission to disclose in legal findings work-related information, must necessarily be interests of considerable importance which are vital to the European Union.
- 73 Accordingly, it must be held that the contested statement of position infringes the concept of 'interests of the Union' as justifying, for the purposes of the second sentence of the first paragraph of Article 19 of the Staff Regulations, the refusal to lift the duty of confidentiality of 12 officials.
- 74 Accordingly, it is necessary to uphold the fifth plea and to annul the contested statement of position, there being no need to rule on the other pleas.

## Costs

- 75 Under Article 134(1) of the Rules of Procedure of the General Court, the unsuccessful party is to be ordered to pay the costs if they have been applied for in the successful party's pleadings.
- 76 In the present case, even though the Court of Auditors has been unsuccessful, the EPPO has not applied for costs. It is therefore appropriate to order each party to bear its own costs.

On those grounds,

LE TRIBUNAL (Fourth Chamber, sitting with five Judges)

hereby:

- 1. Annuls the statement of position of the European Court of Auditors, communicated by letter of 9 December 2024, rejecting the request of the European Public Prosecutor's Office 26 September 2024 to lift the duty of confidentiality of 12 officials of the European Union to be heard as witnesses in an investigation;**
- 2. Orders the European Public Prosecutor's Office and the Court of Auditors to each bear their own costs.**

De Baere

Svenningsen

Mac Eochaidh

Meyer

Jočienė

Delivered in open court in Luxembourg on 10 June 2026.

V. Di Bucci

S. Kingston

Registrar

President