

- legislation or an administrative practice of a Member State which does not allow an ECB staff member to transfer to the ECB pension scheme an amount corresponding to the pension rights he or she has acquired under the pension scheme of that Member State?
2. Must EU law be interpreted as authorising a court of a Member State seised by an ECB staff member to order the transfer to the ECB pension scheme of pension rights acquired by the person concerned under the pension scheme of that Member State, even in the absence of a provision of national law or an agreement, between the Member State concerned and the ECB, providing for such a transfer?

### Ruling

1. Articles 45 and 48 TFEU, Article 11(2) of Annex VIII to the Staff Regulations and Article 8(a) of Annex IIIa to the Decision of the European Central Bank of 9 June 1998 on the adoption of the Conditions of Employment for Staff of the European Central Bank as amended on 31 March 1999, must be interpreted as not precluding, in the absence of an agreement between the European Central Bank (ECB) and the Member State concerned, legislation or an administrative practice of that Member State which does not allow an ECB staff member to transfer, to the ECB pension scheme, an amount corresponding to the pension rights he or she has acquired under the pension scheme of that Member State. However, Article 4(3) TEU requires, in accordance with the principle of sincere cooperation enshrined in that provision, that a Member State to which the conclusion of an agreement is proposed by the ECB, pursuant to Article 8(a) of Annex IIIa, on the transfer, to the ECB pension scheme, of pension rights acquired by its staff members under the pension scheme of that Member State, must participate actively and in good faith in negotiations with the ECB with a view to entering into an agreement with the latter following the opening of negotiations.
2. EU law must be interpreted as not authorising a court of a Member State seised by a European Central Bank (ECB) staff member to order the transfer to the ECB pension scheme of pension rights acquired by the person concerned under the pension scheme of that Member State, in the absence of a provision of national law or an agreement between the Member State concerned and the ECB providing for such a transfer. However, where, owing to the breach, by that Member State, of its obligation, arising from the principle of sincere cooperation enshrined in Article 4(3) TEU, to participate actively and in good faith in negotiations with the ECB with a view to concluding an agreement on the transfer of pension rights, that ECB staff member is unable to have the pension rights which he or she has acquired under the pension scheme of that Member State transferred to the ECB pension

scheme, that provision requires that such a national court take all the measures provided by national procedural rules so as to ensure that that obligation is fulfilled by the competent national authority.

## ECJ 26 January 2023, case C-613/21 P (Parliament v Carbajo Ferrero), Miscellaneous

European Parliament – v – Fernando Carbajo Ferrero, EU case

### Summary

An appeal against the General Court's nullification of an appointment decision was dismissed, as the European Parliament had not complied with requirements of the selection procedure and had also considered incomplete information. No English translation of the case is available. Other translations are available on: <https://curia.europa.eu/juris/fiche.jsf?nat=or&mat=or&pcs=Oor&jur=C%2CT%2CF&num=613%25F21&for=&jge=&dates=&language=en&pro=&cit=none%25CC%25CCJ%25CR%25C2008E%25C%25C%25C%25C%25C%25C%25C%25Ctrue%25Cfalse%25Cfalse&oqp=&td=%3BALL&avg=&lgrc=nl&id=C%3B613%3B21%3BPV%3B1%3BP%3B1%3BC2021%2F0613%2FP&lg=&cid=7695>

## ECJ 9 February 2023, case C-453/21 (X-FAB Dresden), Privacy

X-FAB Dresden GmbH & Co. KG – v – FC, German case

### Summary

The GDPR does not preclude national legislation which enables DPO's to be dismissed only for just cause, even if not related to the performance of the DPO's task, insofar as such regulation does not undermine the GDPR's objectives. A DPO may experience a conflict of interest when other tasks or duties would result in him

or her determining the objectives and methods of processing personal data.

## Questions

1. Must the second sentence of Article 38(3) of the GDPR be interpreted as precluding national legislation which provides that a controller or a processor may dismiss a DPO who is a member of staff of that controller or processor solely where there is just cause, even if the dismissal is not related to the performance of that officer's tasks?
2. In which circumstances may the existence of a 'conflict of interests', within the meaning of Article 38(6) of the GDPR, be established?

## Ruling

1. The second sentence of Article 38(3) of 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), must be interpreted as not precluding national legislation which provides that a controller or a processor may dismiss a data protection officer who is a member of staff of that controller or processor solely where there is just cause, even if the dismissal is not related to the performance of that officer's tasks, in so far as such legislation does not undermine the achievement of the objectives of that regulation.
2. Article 38(6) of Regulation 2016/679 must be interpreted as meaning that a 'conflict of interests', as provided for in that provision, may exist where a data protection officer is entrusted with other tasks or duties, which would result in him or her determining the objectives and methods of processing personal data on the part of the controller or its processor, which is a matter for the national court to determine, case by case, on the basis of an assessment of all the relevant circumstances, in particular the organisational structure of the controller or its processor and in the light of all the applicable rules, including any policies of the controller or its processor.

# ECJ 9 February 2023, case C-402/21 (Staatssecretaris van Justitie en Veiligheid e.a. (Retrait du droit de séjour d'un travailleur turc)), Work and Residence Permit

Staatssecretaris van Justitie en Veiligheid – v – S, E, C, Dutch case

## Summary

The GDPR does not preclude national legislation which enables DPO's to be dismissed only for just cause, even if not related to the performance of the DPO's task, insofar as such regulation does not undermine the GDPR's objectives. A DPO may experience a conflict of interest when other tasks or duties would result in him or her determining the objectives and methods of processing personal data.

## Questions

1. Must Article 13 of Decision No 1/80 be interpreted as meaning that it may be relied on by Turkish nationals who hold the rights referred to in Article 6 or Article 7 of that decision?
2. Must Article 14(1) of Decision No 1/80 be interpreted as meaning that Turkish nationals may rely on Article 13 of that decision in order to oppose a 'new restriction' – within the meaning of that provision and allowing the competent national authorities of a Member State to terminate their right of residence on the ground that, according to those authorities, they constitute a genuine, present and sufficiently serious threat affecting one of the fundamental interests of society – from being applied to them. If so, the referring court seeks to ascertain whether and in what circumstances such a restriction may be justified under Article 14 of that decision?

## Ruling

1. Article 13 of Decision No 1/80 of the Association Council of 19 September 1980 on the development of the Association between the European Economic