



CJEU confirms inadmissibility of action for annulment against Pillar Two Directive

On 30 October 2025, the Court of Justice of the EU (CJEU) rendered its judgment in the appeal of Fugro ([C-146/24 P](#)) to the judgment of the General Court (T-143/23) regarding the action for annulment brought by the company against the Pillar Two Directive. The CJEU confirmed that the General Court correctly held the action for annulment inadmissible on the grounds that the company is not individually affected by the Pillar Two Directive. The Court of Justice did not devote any substantive considerations as to the question on the compatibility or incompatibility of Pillar Two with EU law.

Background and facts of the case

In its action for annulment, the applicant essentially alleged that the Pillar Two Directive, by not fully excluding income from shipping activities covered by an EU Member State's tonnage tax scheme when calculating the qualifying income or loss of a constituent entity for Pillar Two purposes, effectively offsets the corresponding benefit of the Dutch tonnage tax regime - authorized by the European Commission in 2010 and 2019 - through a potential top-up tax. For more details on the facts and grounds of appeal, we refer you to our previous [EUDTG newsalert](#).

The General Court concluded that the company was not individually affected - one of the conditions for the admissibility of an action for annulment - and dismissed the case on this basis. As a result, the court did not rule on the merits of the appeal. Fugro subsequently lodged an appeal with the CJEU against the General Court's judgment, presenting three main lines of argument.

The CJEU's judgment

Fugro's first argument was that the General Court had erred by concluding that, because the Pillar Two Directive is of general application, Fugro could only be concerned in an objective capacity and not individually. Fugro contended that the general nature of the Directive does not exclude individual concern.

The CJEU reaffirmed that while a measure of general application can in theory give rise to individual concern, the General Court correctly applied the two-step analysis and assessed that i) Fugro was concerned by the Pillar Two Directive only in its objective capacity as the parent entity of a multinational enterprise group active in the maritime sector (so that it was concerned by that Directive in the same way as any other economic operator that was, actually or potentially, in an identical situation) and ii) Fugro had not demonstrated that it belonged to a "limited class of persons" within the meaning of the CJEU case-law.

Second, Fugro argued that the General Court wrongly defined the "limited class of operators" maintaining that this concept should include only those operators who had relied on the Commission's decisions approving State aid related to the Dutch tonnage tax scheme. Fugro claimed this limited class was distinct and identifiable. In response to this ground, the CJEU ruled that the General Court took account of the definition of that concept, as relied on before it, namely a class composed of the persons benefiting from the Dutch tonnage tax scheme under decisions of the Dutch tax authorities.

Nonetheless, as per the CJEU, the General Court established, in essence, that the beneficiaries of a favourable tax scheme, such as that Dutch tonnage tax scheme, did not form a limited class of operators. As a result, the General Court cannot be accused of incorrectly interpreting the concept of “limited class of persons”.

Finally, Fugro argued that the General Court erred in holding that it did not belong to a “limited class of operators” at the time the Pillar Two Directive was adopted. Fugro contended that this limited class was identifiable through national decisions approving the Dutch tonnage tax scheme, and that the Directive effectively annulled previous Commission approvals of State aid benefiting that class. Fugro further claimed it was directly affected because the Directive forced it to alter its business model rapidly and placed it at a competitive disadvantage by increasing its tax burden. It emphasized that prior to the Directive, this limited group’s income was almost entirely governed by the approved tax scheme, which was crucial for long-term investments.

The CJEU rejected these claims, reaffirming established case law that an EU legislative act may individually concern persons only if they possess specific attributes distinguishing them from others, making them identifiable at the time of the act’s adoption. According to the CJEU, the General Court was entitled to hold that the beneficiaries of the Dutch tonnage tax scheme constituted an open group because any qualifying operator in the Netherlands could opt in. Thus, the class of affected persons was neither closed nor limited at the time the Directive was adopted and could be extended afterwards.

Moreover, the Court held that merely benefiting from a favorable tax scheme affected by the Directive does not confer an acquired right specific and exclusive to Fugro or to a limited class. This is because other economic operators may benefit from the Dutch tonnage tax scheme or from similar schemes in other EU Member States and may see the benefit offset by the top-up tax provided for in the Directive. The fact that long-term investments were made with knowledge of the favorable scheme did not alter this assessment.

Therefore, the CJEU sided with the General Court in its assessment that Fugro was not individually concerned by the Pillar Two Directive nor part of a limited class, and the appeal was dismissed.

Takeaway

In the present judgment, the CJEU confirmed the General Court’s finding that the applicant lacks individual concern to challenge the Pillar Two Directive. The judgment is final and not subject to further appeal. This ruling arises from an appeal action against the Directive, which is governed by strict temporal and substantive conditions. The CJEU did not address the interaction between Pillar Two and EU law in substance.

Currently, another case has been lodged with the CJEU concerning the compatibility of the Pillar Two Directive, this time through a preliminary ruling procedure requested by the Belgian Constitutional Court. The question referred to the CJEU relates to whether the Undertaxed Payments Rule (UTPR) in the EU Directive is compatible with the EU fundamental freedoms, the EU Charter of Fundamental Rights, and the principles of legal certainty and fiscal territoriality.

Let's talk

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