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By PwC Deutschland | 08 September 2026

ECJ: Liability for infringement of EU law

In two decisions from today the European Court of Justice commented on the conditions under which an individual may obtain redress following a decision of a court or tribunal that is contrary to EU law. It confirms, inter alia, that the rule breached must confer rights on individuals and that the wrongful failure by the national court or tribunal to question the Court of Justice as to the interpretation of that rule may help to establish liability.

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In two judgments, delivered today, the ECJ develops its case-law concerning the liability of Member States for infringements of EU law by a national court of last instance and specifies the role of a failure to fulfil the obligation to make a reference for a preliminary ruling.

Thus, **in a Romanian case**, the ECJ indicates that such liability cannot be triggered unless the obligation to refer is accompanied by breach of another rule of EU law intended to confer rights on individuals. This was not, however, the situation in the case at hand, as the rules at issue relating to the precise identification of agricultural areas pursue a general objective of public interest, namely protecting the financial interests of the Union.

In a Portuguese case, the rules at issue, incorrectly applied in a decision of a supreme court dating from 2009, did have such an objective, given that they protect workers in the event of transfers of undertakings. The ECJ indicates that it is for the referring court to verify whether that decision constitutes a sufficiently serious breach of EU law, which is one of the conditions for triggering the liability of a Member State for infringement of that law by one of its courts' ruling at last instance. However, the Court highlights certain factors which it classifies as decisive for the purposes of that examination, suggesting that that condition is indeed met in the case in the main proceedings.

More details to be found in the ECJ's **press release No 120/26** of 8 September 2026 (with direct links to the judgments).

Keywords

compensation, damages