**Court of Justice EU, 24 September 2019, Google v CNIL**

**PRIVACY**

**Google is not required to carry out worldwide de-referencing on all versions of its search engine – by a request or order for de-referencing:**

- **in a globalised world may access outside the Union likely have effects within the Union itself**

Such considerations are such as to justify the existence of a competence on the part of the EU legislature to lay down the obligation, for a search engine operator, to carry out, when granting a request for de-referencing made by such a person, a de-referencing on all the versions of its search engine.

- **numerous third States do not recognize the right to de-referencing or have a different approach to that right**
- **the right of the protection of personal data is not an absolute right and the balance between the right to privacy and the freedom of information is likely to vary significantly**
- **the legislature has chosen to confer a scope on the protection that won't enshrined beyond the territory of the Member States**

It follows that, currently, there is no obligation under EU law, for a search engine operator who grants a request for de-referencing made by a data subject, as the case may be, following an injunction from a supervisory or judicial authority of a Member State, to carry out such a de-referencing on all the versions of its search engine.

**Google is required to carry out de-referencing on all EU-versions:**

- **the de-referencing should be accompanied with measures that have the effect of preventing or, at the very least, seriously discouraging internet users in the Member States from gaining access to the links in question with a help from a non-EU-version using a search conducted on the basis of that data subject's name**

Regarding the question whether such a de-referencing is to be carried out on the versions of the search engine corresponding to the Member States or only on the version of that search engine corresponding to the Member State of residence of the person benefiting from the de-referencing, it follows from, inter alia, the fact that the EU legislature has now chosen to lay down the rules concerning data protection by way of a regulation, which is directly applicable in all the Member States, which has been done, as is emphasised by recital 10 of Regulation 2016/679, in order to ensure a consistent and high level of protection throughout the European Union and to remove the obstacles to flows of personal data within the Union, that the de-referencing in question is, in principle, supposed to be carried out in respect of all the Member States.

[...]

70. In addition, it is for the search engine operator to take, if necessary, sufficiently effective measures to ensure the effective protection of the data subject's fundamental rights. Those measures must themselves meet all the legal requirements and have the effect of preventing or, at the very least, seriously discouraging internet users in the Member States from gaining access to the links in question using a search conducted on the basis of that data subject's name (see, by analogy, judgments of **27 March 2014, UPC Telekabel Wien, C‑314/12, EU:C:2014:192, paragraph 62**, and of **15 September 2016, McFadden, C‑484/14, EU:C:2016:689, paragraph 96**).

Source: **curia.europa.eu**

**Court of Justice EU, 24 September 2019**

(K. Lenaerts, A. Arabadjiev, E. Regan, T. von Danwitz, C. Toader and F. Biltgen, Presidents of Chambers, M. Ilešič (Rapporteur), L. Bay Larsen, M. Safjan, D. Šváby, C.G. Fernlund, C. Vajda and S. Rodin)

JUDGMENT OF THE COURT (Grand Chamber)

24 September 2019 (*)

(Reference for a preliminary ruling — Personal data — Protection of individuals with regard to the processing of such data — Directive 95/46/EC — Regulation (EU) 2016/679 — Internet search engines — Processing of data on web pages — Territorial scope of the right to de-referencing)

In Case C‑507/17,

REQUEST for a preliminary ruling under Article 267 TFEU from the Conseil d'État (Council of State, France), made by decision of 19 July 2017, received at the Court on 21 August 2017, in the proceedings

Google LLC, successor in law to Google Inc.,

v

Commission nationale de l'informatique et des libertés (CNIL),

in the presence of:

Wikimedia Foundation Inc.,

Fondation pour la liberté de la presse,

Microsoft Corp.,

Reporters Committee for Freedom of the Press and Others,

Article 19 and Others,

Internet Freedom Foundation and Others,

Défenseur des droits,

THE COURT (Grand Chamber),

composed of K. Lenaerts, President, A. Arabadjiev, E. Regan, T. von Danwitz, C. Toader and F. Biltgen, Presidents of Chambers, M. Ilešič (Rapporteur), L. Bay Larsen, M. Safjan, D. Šváby, C.G. Fernlund, C. Vajda and S. Rodin, judges,

Advocate General: M. Szpunar,

Registrar: V. Giacobbo-Peyronnel, Administrator,

having regard to the written procedure and further to the hearing on 11 September 2018,

after considering the observations submitted on behalf of:
– Google LLC, by P. Spinosi, Y. Pelosi and W. Maxwell, advocats,
– the Commission nationale de l'informatique et des libertés (CNIL), by I. Falque‑Pierrotin, J. Lessi and G. Le Grand, acting as Agents,
– Wikimedia Foundation Inc., by C. Rameix‑Seguin, avocate,
– the Fondation pour la liberté de la presse, by T. Haas, advocat,
– Microsoft Corp., by E. Piwnica, avocat,
– the Reporters Committee for Freedom of the Press and Others, by F. Louis, avocat, and by H.-G. Kamann, C. Schwedler and M. Braun, Rechtsanwälte,
– Article 19 and Others, by G. Tapie, avocat, G. Facenna QC, and E. Metcalfe, Barrister,
– Internet Freedom Foundation and Others, by T. Haas, avocat,
– the Défenseur des droits, by J. Toubon, acting as Agent,
– the French Government, by D. Colas, R. Coesme, E. de Moustier and S. Ghiandoni, acting as Agents,
– Ireland, by M. Browne, G. Hodge, J. Quaney and A. Joyce, acting as Agents, and by M. Gray, Barrister-at-Law,
– the Greek Government, by E.-M. Mamouna, G. Papadaki, E. Zisi and S. Papaioannou, acting as Agents,
– the Italian Government, by G. Palmieri, acting as Agent, and by R. Guizzi, avvocato dello Stato,
– the Austrian Government, by G. Eberhard and G. Kunnert, acting as Agents,
– the Polish Government, by B. Majczyna, M. Pawlicka and J. Sawicka, acting as Agents,
– the European Commission, by A. Buchet, H. Kranenborg and D. Nardi, acting as Agents,
after hearing **the Opinion of the Advocate General at the sitting on 10 January 2019**,
gives the following

**Judgment**

1. This request for a preliminary ruling concerns the interpretation of Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data (OJ 1995 L 281, p. 31).

2. The request has been made in proceedings between Google LLC, successor in law to Google Inc., and the Commission nationale de l'informatique et des libertés (French Data Protection Authority, France) (*'the CNIL'*) concerning a penalty of EUR 100 000 imposed by the CNIL on Google because of that company's refusal, when granting a de-referencing request, to apply it to all its search engine's domain name extensions.

**Legal context**

**European Union law**

**Directive 95/46**

3. According to Article 1(1) thereof, the purpose of Directive 95/46 is to protect the fundamental rights and freedoms of natural persons, and in particular their right to privacy with respect to the processing of personal data, and to remove obstacles to the free movement of such data.

4. Recitals 2, 7, 10, 18, 20 and 37 of Directive 95/46 state:

*'(2) Whereas data-processing systems are designed to serve man; whereas they must, whatever the nationality or residence of natural persons, respect their fundamental rights and freedoms, notably the right to privacy, and contribute to … the well-being of individuals;*

*…*

*(7) Whereas the difference in levels of protection of the rights and freedoms of individuals, notably the right to privacy, with regard to the processing of personal data afforded in the Member States may prevent the transmission of such data from the territory of one Member State to that of another Member State; whereas this difference may therefore constitute an obstacle to the pursuit of a number of economic activities at Community level …*

*…*

*(10) Whereas the object of the national laws on the processing of personal data is to protect fundamental rights and freedoms, notably the right to privacy, which is recognised both in Article 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms[, signed in Rome on 4 November 1950,] and in the general principles of Community law; whereas, for that reason, the approximation of those laws must not result in any lessening of the protection they afford but must, on the contrary, seek to ensure a high level of protection in the Community;*

*…*

*(18) Whereas, in order to ensure that individuals are not deprived of the protection to which they are entitled under this Directive, any processing of personal data in the Community must be carried out in accordance with the law of one of the Member States; …*

*…*

*(20) Whereas the fact that the processing of data is carried out by a person established in a third country must not stand in the way of the protection of individuals provided for in this Directive; whereas in these cases, the processing should be governed by the law of the Member State in which the means used are located, and there should be guarantees to ensure that the rights and obligations provided for in this Directive are respected in practice;*

*…*

*(37) Whereas the processing of personal data for purposes of journalism or for purposes of literary [or] artistic expression, in particular in the audiovisual field, should qualify for exemption from the requirements of certain provisions of this Directive in so far as this is necessary to reconcile the fundamental rights of individuals with freedom of information and notably the right to receive and impart information, as guaranteed in particular in Article 10 of the European Convention for the Protection of Human Rights and*

*Fundamental Freedoms; whereas Member States should therefore lay down exemptions and derogations necessary for the purpose of balance between fundamental rights as regards general measures on the legitimacy of data processing …*'

5. Article 2 of that directive provides:

'*For the purposes of this Directive:*

*(a) "personal data" shall mean any information relating to an identified or identifiable natural person ("data subject"); …*

*(b) "processing of personal data" ("processing") shall mean any operation or set of operations which is performed upon personal data, whether or not by automatic means, such as collection, recording, organisation, storage, adaptation or alteration, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, blocking, erasure or destruction;*

…

*(d) "controller" shall mean the natural or legal person, public authority, agency or any other body which alone or jointly with others determines the purposes and means of the processing of personal data;*

…

*…*'

6. Article 4 of that directive, entitled '*National law applicable*', provides:

'*1. Each Member State shall apply the national provisions it adopts pursuant to this Directive to the processing of personal data where:*

*(a) the processing is carried out in the context of the activities of an establishment of the controller on the territory of the Member State; when the same controller is established on the territory of several Member States, he must take the necessary measures to ensure that each of these establishments complies with the obligations laid down by the national law applicable;*

*(b) the controller is not established on the Member State's territory, but in a place where its national law applies by virtue of international public law;*

*(c) the controller is not established on Community territory and, for purposes of processing personal data makes use of equipment, automated or otherwise, situated on the territory of the said Member State, unless such equipment is used only for purposes of transit through the territory of the Community.*

*2. In the circumstances referred to in paragraph 1(c), the controller must designate a representative established in the territory of that Member State, without prejudice to legal actions which could be initiated against the controller himself.*'

7. Article 9 of Directive 95/46, entitled '*Processing of personal data and freedom of expression*', states:

'*Member States shall provide for exemptions or derogations from the provisions of this Chapter, Chapter IV and Chapter VI for the processing of personal data carried out solely for journalistic purposes or the purpose of artistic or literary expression only if they are necessary to reconcile the right to privacy with the rules governing freedom of expression.*'

8. Article 12 of that directive, entitled '*Right of access*', provides:

'*Member States shall guarantee every data subject the right to obtain from the controller:*

…

*(b) as appropriate the rectification, erasure or blocking of data the processing of which does not comply with the provisions of this Directive, in particular because of the incomplete or inaccurate nature of the data;*

*…*'

9. Article 14 of that directive, entitled '*The data subject's right to object*', provides:

'*Member States shall grant the data subject the right:*

*(a) at least in the cases referred to in Article 7(e) and (f), to object at any time on compelling legitimate grounds relating to his particular situation to the processing of data relating to him, save where otherwise provided by national legislation. Where there is a justified objection, the processing instigated by the controller may no longer involve those data;*

*…*'

10. Article 24 of Directive 95/46, entitled '*Sanctions*', provides:

'*The Member States shall adopt suitable measures to ensure the full implementation of the provisions of this Directive and shall in particular lay down the sanctions to be imposed in case of infringement of the provisions adopted pursuant to this Directive.*'

11. Article 28 of that directive, entitled '*Supervisory authority*', is worded as follows:

'*1. Each Member State shall provide that one or more public authorities are responsible for monitoring the application within its territory of the provisions adopted by the Member States pursuant to this Directive.*

…

*3. Each authority shall in particular be endowed with:*

*– investigative powers, such as powers of access to data forming the subject matter of processing operations and powers to collect all the information necessary for the performance of its supervisory duties,*

*– effective powers of intervention, such as, for example, that of … ordering the blocking, erasure or destruction of data, [or] of imposing a temporary or definitive ban on processing …*

…

*Decisions by the supervisory authority which give rise to complaints may be appealed against through the courts.*

*4. Each supervisory authority shall hear claims lodged by any person, or by an association representing that person, concerning the protection of his rights and freedoms in regard to the processing of personal data. The person concerned shall be informed of the outcome of the claim.*

…

*6. Each supervisory authority is competent, whatever the national law applicable to the processing in question, to exercise, on the territory of its own*

*Member State, the powers conferred on it in accordance with paragraph 3. Each authority may be requested to exercise its powers by an authority of another Member State.*
*The supervisory authorities shall cooperate with one another to the extent necessary for the performance of their duties, in particular by exchanging all useful information.*
*…'*

**Regulation (EU) 2016/679**

12. Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of individuals with regard to the processing of personal data and on the free movement of such data and repealing Directive 95/46 (General Data Protection Regulation) (OJ 2016 L 119, p. 1, and Corrigendum OJ 2018 L 127, p. 2), which is based on Article 16 TFEU, is applicable, pursuant to Article 99(2) thereof, from 25 May 2018. Article 94(1) of that regulation provides that Directive 95/46 is repealed with effect from that date.

13. Recitals 1, 4, 9 to 11, 13, 22 to 25 and 65 of that regulation state:

'*(1) The protection of natural persons in relation to the processing of personal data is a fundamental right. Article 8(1) of the Charter of Fundamental Rights of the European Union ("the Charter") and Article 16(1) [TFEU] provide that everyone has the right to the protection of personal data concerning him or her.*
*…*
*(4) The processing of personal data should be designed to serve mankind. The right to the protection of personal data is not an absolute right; it must be considered in relation to its function in society and be balanced against other fundamental rights, in accordance with the principle of proportionality. This Regulation respects all fundamental rights and observes the freedoms and principles recognised in the Charter as enshrined in the Treaties, in particular the respect for private and family life, … the protection of personal data, freedom of thought, conscience and religion, freedom of expression and information [and] freedom to conduct a business …*
*…*
*(9) … Directive 95/46 … has not prevented fragmentation in the implementation of data protection across the Union … Differences in the level of protection … in the Member States may prevent the free flow of personal data throughout the Union. Those differences may therefore constitute an obstacle to the pursuit of economic activities at the level of the Union …*
*(10) In order to ensure a consistent and high level of protection of natural persons and to remove the obstacles to flows of personal data within the Union, the level of protection of the rights and freedoms of natural persons with regard to the processing of such data should be equivalent in all Member States. …*
*(11) Effective protection of personal data throughout the Union requires the strengthening and setting out in detail of the rights of data subjects and the obligations of those who process and determine the processing of personal data, as well as equivalent powers for monitoring and ensuring compliance with the rules for the protection of personal data and equivalent sanctions for infringements in the Member States.*
*…*
*(13) In order to ensure a consistent level of protection for natural persons throughout the Union and to prevent divergences hampering the free movement of personal data within the internal market, a Regulation is necessary to provide legal certainty and transparency for economic operators, … and to provide natural persons in all Member States with the same level of legally enforceable rights and obligations and responsibilities for controllers and processors, to ensure consistent monitoring of the processing of personal data, and equivalent sanctions in all Member States as well as effective cooperation between the supervisory authorities of different Member States. The proper functioning of the internal market requires that the free movement of personal data within the Union is not restricted or prohibited for reasons connected with the protection of natural persons with regard to the processing of personal data. …*
*…*
*(22) Any processing of personal data in the context of the activities of an establishment of a controller or a processor in the Union should be carried out in accordance with this Regulation, regardless of whether the processing itself takes place within the Union. …*
*(23) In order to ensure that natural persons are not deprived of the protection to which they are entitled under this Regulation, the processing of personal data of data subjects who are in the Union by a controller or a processor not established in the Union should be subject to this Regulation where the processing activities are related to offering goods or services to such data subjects irrespective of whether connected to a payment. In order to determine whether such a controller or processor is offering goods or services to data subjects who are in the Union, it should be ascertained whether it is apparent that the controller or processor envisages offering services to data subjects in one or more Member States in the Union. …*
*(24) The processing of personal data of data subjects who are in the Union by a controller or processor not established in the Union should also be subject to this Regulation when it is related to the monitoring of the behaviour of such data subjects in so far as their behaviour takes place within the Union. In order to determine whether a processing activity can be considered to monitor the behaviour of data subjects, it should be ascertained whether natural persons are tracked on the internet including potential subsequent use of personal data processing techniques which consist of profiling a natural person, particularly in order to take decisions concerning her or him or for analysing or predicting her or his personal preferences, behaviours and attitudes.*
*(25) Where Member State law applies by virtue of public international law, this Regulation should also apply to a controller not established in the Union, such*

*as in a Member State's diplomatic mission or consular post.*
…
*(65) A data subject should have … a "right to be forgotten" where the retention of such data infringes this Regulation or Union or Member State law to which the controller is subject … However, the further retention of the personal data should be lawful where it is necessary, for exercising the right of freedom of expression and information …'*

14. Article 3 of Regulation 2016/679, entitled '*Territorial scope*', is worded as follows:

'*1. This Regulation applies to the processing of personal data in the context of the activities of an establishment of a controller or a processor in the Union, regardless of whether the processing takes place in the Union or not.*
*2. This Regulation applies to the processing of personal data of data subjects who are in the Union by a controller or processor not established in the Union, where the processing activities are related to:*
*(a) the offering of goods or services, irrespective of whether a payment of the data subject is required, to such data subjects in the Union; or*
*(b) the monitoring of their behaviour as far as their behaviour takes place within the Union.*
*3. This Regulation applies to the processing of personal data by a controller not established in the Union, but in a place where Member State law applies by virtue of public international law.*'

15. Article 4(23) of that regulation defines the concept of '*cross-border processing*' as follows:

'*(a) processing of personal data which takes place in the context of the activities of establishments in more than one Member State of a controller or processor in the Union where the controller or processor is established in more than one Member State; or*
*(b) processing of personal data which takes place in the context of the activities of a single establishment of a controller or processor in the Union but which substantially affects or is likely to substantially affect data subjects in more than one Member State*'.

16. Article 17 of that regulation, entitled '*Right to erasure ("right to be forgotten")*', is worded as follows:

*'1. The data subject shall have the right to obtain from the controller the erasure of personal data concerning him or her without undue delay and the controller shall have the obligation to erase personal data without undue delay where one of the following grounds applies:*
*(a) the personal data are no longer necessary in relation to the purposes for which they were collected or otherwise processed;*
*(b) the data subject withdraws consent on which the processing is based according to point (a) of Article 6(1), or point (a) of Article 9(2), and where there is no other legal ground for the processing;*
*(c) the data subject objects to the processing pursuant to Article 21(1) and there are no overriding legitimate grounds for the processing, or the data subject objects to the processing pursuant to Article 21(2);*
*(d) the personal data have been unlawfully processed;*
*(e) the personal data have to be erased for compliance with a legal obligation in Union or Member State law to which the controller is subject;*
*(f) the personal data have been collected in relation to the offer of information society services referred to in Article 8(1).*
…
*3. Paragraphs 1 and 2 shall not apply to the extent that processing is necessary:*
*(a) for exercising the right of freedom of expression and information;*
*…'*

17. Article 21 of that regulation, entitled '*Right to object*', provides, in paragraph 1 thereof:

'*The data subject shall have the right to object, on grounds relating to his or her particular situation, at any time to processing of personal data concerning him or her which is based on point (e) or (f) of Article 6(1), including profiling based on those provisions. The controller shall no longer process the personal data unless the controller demonstrates compelling legitimate grounds for the processing which override the interests, rights and freedoms of the data subject or for the establishment, exercise or defence of legal claims.*'

18. Article 55 of Regulation 2016/679, entitled '*Competence*', which forms part of Chapter VI of that regulation, itself entitled '*Independent supervisory authorities*', provides, in paragraph 1 thereof:

'*Each supervisory authority shall be competent for the performance of the tasks assigned to and the exercise of the powers conferred on it in accordance with this Regulation on the territory of its own Member State.*'

19. Article 56 of that regulation, entitled '*Competence of the lead supervisory authority*', states:

'*1. Without prejudice to Article 55, the supervisory authority of the main establishment or of the single establishment of the controller or processor shall be competent to act as lead supervisory authority for the cross-border processing carried out by that controller or processor in accordance with the procedure provided in Article 60.*
*2. By derogation from paragraph 1, each supervisory authority shall be competent to handle a complaint lodged with it or a possible infringement of this Regulation, if the subject matter relates only to an establishment in its Member State or substantially affects data subjects only in its Member State.*
*3. In the cases referred to in paragraph 2 of this Article, the supervisory authority shall inform the lead supervisory authority without delay on that matter. Within a period of three weeks after being informed the lead supervisory authority shall decide whether or not it will handle the case in accordance with the procedure provided in Article 60, taking into account whether or not there is an establishment of the controller or processor in the Member State of which the supervisory authority informed it.*

*4. Where the lead supervisory authority decides to handle the case, the procedure provided in Article 60 shall apply. The supervisory authority which informed the lead supervisory authority may submit to the lead supervisory authority a draft for a decision. The lead supervisory authority shall take utmost account of that draft when preparing the draft decision referred to in Article 60(3).*
*5. Where the lead supervisory authority decides not to handle the case, the supervisory authority which informed the lead supervisory authority shall handle it according to Articles 61 and 62.*
*6. The lead supervisory authority shall be the sole interlocutor of the controller or processor for the cross-border processing carried out by that controller or processor.*'
20. Article 58 of that regulation, entitled '*Powers*', provides, in paragraph 2 thereof:
'*Each supervisory authority shall have all of the following corrective powers:*
…
*(g) to order the … erasure of personal data … pursuant to … [Article] … 17 …;*
…
*(i) to impose an administrative fine … in addition to, or instead of measures referred to in this paragraph, depending on the circumstances of each individual case.*'
21. Under Chapter VII of Regulation 2016/679, entitled '*Cooperation and consistency*', Section I, entitled '*Cooperation*', *includes Articles 60 to 62 of that regulation. Article 60, entitled 'Cooperation between the lead supervisory authority and the other supervisory authorities concerned*', provides:
'*1. The lead supervisory authority shall cooperate with the other supervisory authorities concerned in accordance with this Article in an endeavour to reach consensus. The lead supervisory authority and the supervisory authorities concerned shall exchange all relevant information with each other.*
*2. The lead supervisory authority may request at any time other supervisory authorities concerned to provide mutual assistance pursuant to Article 61 and may conduct joint operations pursuant to Article 62, in particular for carrying out investigations or for monitoring the implementation of a measure concerning a controller or processor established in another Member State.*
*3. The lead supervisory authority shall, without delay, communicate the relevant information on the matter to the other supervisory authorities concerned. It shall without delay submit a draft decision to the other supervisory authorities concerned for their opinion and take due account of their views.*
*4. Where any of the other supervisory authorities concerned within a period of four weeks after having been consulted in accordance with paragraph 3 of this Article, expresses a relevant and reasoned objection to the draft decision, the lead supervisory authority shall, if it does not follow the relevant and reasoned objection or is of the opinion that the objection is not relevant or reasoned, submit the matter to the consistency mechanism referred to in Article 63.*
*5. Where the lead supervisory authority intends to follow the relevant and reasoned objection made, it shall submit to the other supervisory authorities concerned a revised draft decision for their opinion. That revised draft decision shall be subject to the procedure referred to in paragraph 4 within a period of two weeks.*
*6. Where none of the other supervisory authorities concerned has objected to the draft decision submitted by the lead supervisory authority within the period referred to in paragraphs 4 and 5, the lead supervisory authority and the supervisory authorities concerned shall be deemed to be in agreement with that draft decision and shall be bound by it.*
*7. The lead supervisory authority shall adopt and notify the decision to the main establishment or single establishment of the controller or processor, as the case may be and inform the other supervisory authorities concerned and the Board of the decision in question, including a summary of the relevant facts and grounds. The supervisory authority with which a complaint has been lodged shall inform the complainant on the decision.*
*8. By derogation from paragraph 7, where a complaint is dismissed or rejected, the supervisory authority with which the complaint was lodged shall adopt the decision and notify it to the complainant and shall inform the controller thereof.*
*9. Where the lead supervisory authority and the supervisory authorities concerned agree to dismiss or reject parts of a complaint and to act on other parts of that complaint, a separate decision shall be adopted for each of those parts of the matter. …*
*10. After being notified of the decision of the lead supervisory authority pursuant to paragraphs 7 and 9, the controller or processor shall take the necessary measures to ensure compliance with the decision as regards processing activities in the context of all its establishments in the Union. The controller or processor shall notify the measures taken for complying with the decision to the lead supervisory authority, which shall inform the other supervisory authorities concerned.*
*11. Where, in exceptional circumstances, a supervisory authority concerned has reasons to consider that there is an urgent need to act in order to protect the interests of data subjects, the urgency procedure referred to in Article 66 shall apply.*
*…*'
22. Article 61 of that regulation, entitled '*Mutual assistance*', states, in paragraph 1 thereof:
'*Supervisory authorities shall provide each other with relevant information and mutual assistance in order to implement and apply this Regulation in a consistent manner, and shall put in place measures for effective cooperation with one another. Mutual assistance shall cover, in particular, information requests and supervisory measures, such as requests to carry out*

*prior authorisations and consultations, inspections and investigations.*'

23. Article 62 of that regulation, entitled '*Joint operations of supervisory authorities*', provides:

'*1. The supervisory authorities shall, where appropriate, conduct joint operations including joint investigations and joint enforcement measures in which members or staff of the supervisory authorities of other Member States are involved.*

*2. Where the controller or processor has establishments in several Member States or where a significant number of data subjects in more than one Member State are likely to be substantially affected by processing operations, a supervisory authority of each of those Member States shall have the right to participate in joint operations. …*'

24. Section 2, entitled '*Consistency*', of Chapter VII of Regulation 2016/679 includes Articles 63 to 67 of that regulation. Article 63, entitled '*Consistency mechanism*', is worded as follows:

'*In order to contribute to the consistent application of this Regulation throughout the Union, the supervisory authorities shall cooperate with each other and, where relevant, with the Commission, through the consistency mechanism as set out in this Section.*'

25. Article 65 of that regulation, entitled '*Dispute resolution by the Board*', provides, in paragraph 1 thereof:

'*In order to ensure the correct and consistent application of this Regulation in individual cases, the Board shall adopt a binding decision in the following cases:*

*(a) where, in a case referred to in Article 60(4), a supervisory authority concerned has raised a relevant and reasoned objection to a draft decision of the lead supervisory authority and the lead supervisory authority has not followed the objection or has rejected such an objection as being not relevant or reasoned. The binding decision shall concern all the matters which are the subject of the relevant and reasoned objection, in particular whether there is an infringement of this Regulation;*

*(b) where there are conflicting views on which of the supervisory authorities concerned is competent for the main establishment;*

…'

26. Article 66 of that regulation, entitled '*Urgency procedure*', provides, in paragraph 1 thereof:

'*In exceptional circumstances, where a supervisory authority concerned considers that there is an urgent need to act in order to protect the rights and freedoms of data subjects, it may, by way of derogation from the consistency mechanism referred to in Articles 63, 64 and 65 or the procedure referred to in Article 60, immediately adopt provisional measures intended to produce legal effects on its own territory with a specified period of validity which shall not exceed three months. The supervisory authority shall, without delay, communicate those measures and the reasons for adopting them to the other supervisory authorities concerned, to the Board and to the Commission.*'

27. Article 85 of Regulation 2016/679, entitled '*Processing and freedom of expression and information*', states:

'*1. Member States shall by law reconcile the right to the protection of personal data pursuant to this Regulation with the right to freedom of expression and information, including processing for journalistic purposes and the purposes of academic, artistic or literary expression.*

*2. For processing carried out for journalistic purposes or the purpose of academic, artistic or literary expression, Member States shall provide for exemptions or derogations from Chapter II (principles), Chapter III (rights of the data subject), Chapter IV (controller and processor), Chapter V (transfer of personal data to third countries or international organisations), Chapter VI (independent supervisory authorities), Chapter VII (cooperation and consistency) and Chapter IX (specific data processing situations) if they are necessary to reconcile the right to the protection of personal data with the freedom of expression and information.*

…'

**French law**

28. Directive 95/46 is implemented in French law by loi n° 78-17, du 6 janvier 1978, relative à l'informatique, aux fichiers et aux libertés (Law No 78-17 of 6 January 1978 on information technology, data files and civil liberties), in the version applicable to the events in the main proceedings ('*the Law of 6 January 1978*').

29. Article 45 of that law specifies that where the controller fails to fulfil the obligations laid down in that law, the President of the CNIL may serve notice on him to bring the established infringement to an end within a period which the President is to determine. If the controller does not comply with the formal notice served on him, the Select Panel of the CNIL may, after hearing both parties, impose, inter alia, a financial penalty.

**The dispute in the main proceedings and the questions referred for a preliminary ruling**

30. By decision of 21 May 2015, the President of the CNIL served formal notice on Google that, when granting a request from a natural person for links to web pages to be removed from the list of results displayed following a search conducted on the basis of that person's name, it must apply that removal to all its search engine's domain name extensions.

31. Google refused to comply with that formal notice, confining itself to removing the links in question from only the results displayed following searches conducted from the domain names corresponding to the versions of its search engine in the Member States.

32. The CNIL also regarded as insufficient Google's further '*geo-blocking*' proposal, made after expiry of the time limit laid down in the formal notice, whereby internet users would be prevented from accessing the results at issue from an IP (Internet Protocol) address deemed to be located in the State of residence of a data subject after conducting a search on the basis of that

data subject's name, no matter which version of the search engine they used.

33. By an adjudication of 10 March 2016, the CNIL, after finding that Google had failed to comply with that formal notice within the prescribed period, imposed a penalty on that company of EUR 100 000, which was made public.

34. By application lodged with the Conseil d'État (Council of State, France), Google seeks annulment of that adjudication.

35. The Conseil d'État notes that the processing of personal data carried out by the search engine operated by Google falls within the scope of the Law of 6 January 1978, in view of the activities of promoting and selling advertising space carried on in France by its subsidiary Google France.

36. The Conseil d'État also notes that the search engine operated by Google is broken down into different domain names by geographical extensions, in order to tailor the results displayed to the specificities, particularly the linguistic specificities, of the various States in which that company carries on its activities. Where the search is conducted from '*google.com*', Google, in principle, automatically redirects that search to the domain name corresponding to the State from which that search is deemed to have been made, as identified by the internet user's IP address. However, regardless of his or her location, the internet user remains free to conduct his or her searches using the search engine's other domain names. Moreover, although the results may differ depending on the domain name from which the search is conducted on the search engine, it is common ground that the links displayed in response to a search derive from common databases and common indexing.

37. The Conseil d'État considers that, having regard, first, to the fact that Google's search engine domain names can all be accessed from French territory and, secondly, to the existence of gateways between those various domain names, as illustrated in particular by the automatic redirection mentioned above, as well as by the presence of cookies on extensions of that search engine other than the one on which they were initially deposited, that search engine, which, moreover, has been the subject of only one declaration to the CNIL, must be regarded as carrying out a single act of personal data processing for the purposes of applying the Law of 6 January 1978. As a result, the processing of personal data by the search engine operated by Google is carried out within the framework of one of its installations, Google France, established on French territory, and is therefore subject to the Law of 6 January 1978.

38. Before the Conseil d'État, Google maintains that the penalty at issue is based on a misinterpretation of the provisions of the Law of 6 January 1978, which transpose Article 12(b) and subparagraph (a) of the first paragraph of Article 14 of Directive 95/46, on the basis of which the Court, in its **judgment of 13 May 2014, Google Spain and Google (C‑131/12, EU:C:2014:317),** recognised a '*right to de-referencing*'. Google argues that this right does not necessarily require that the links at issue are to be removed, without geographical limitation, from all its search engine's domain names. In addition, by adopting such an interpretation, the CNIL disregarded the principles of courtesy and non-interference recognised by public international law and disproportionately infringed the freedoms of expression, information, communication and the press guaranteed, in particular, by Article 11 of the Charter.

39. Having noted that this line of argument raises several serious difficulties regarding the interpretation of Directive 95/46, the Conseil d'État has decided to stay the proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:

'*(1) Must the "right to de-referencing", as established by the [Court] in its* ***judgment of 13 May 2014, [Google Spain and Google (C‑131/12, EU:C:2014:317),]*** *on the basis of the provisions of [Article 12(b) and subparagraph (a) of the first paragraph of Article 14] of Directive [95/46], be interpreted as meaning that a search engine operator is required, when granting a request for de-referencing, to deploy the de-referencing to all of the domain names used by its search engine so that the links at issue no longer appear, irrespective of the place from where the search initiated on the basis of the requester's name is conducted, and even if it is conducted from a place outside the territorial scope of Directive [95/46]?*

*(2) In the event that Question 1 is answered in the negative, must the "right to de-referencing", as established by the [Court] in* ***the judgment cited above****, be interpreted as meaning that a search engine operator is required, when granting a request for de-referencing, only to remove the links at issue from the results displayed following a search conducted on the basis of the requester's name on the domain name corresponding to the State in which the request is deemed to have been made or, more generally, on the domain names distinguished by the national extensions used by that search engine for all of the Member States …?*

*3. Moreover, in addition to the obligation mentioned in Question 2, must the "right to de-referencing" as established by the [Court] in* ***its judgment cited above****, be interpreted as meaning that a search engine operator is required, when granting a request for de-referencing, to remove the results at issue, by using the "geo-blocking" technique, from searches conducted on the basis of the requester's name from an IP address deemed to be located in the State of residence of the person benefiting from the "right to de-referencing", or even, more generally, from an IP address deemed to be located in one of the Member States subject to Directive [95/46], regardless of the domain name used by the internet user conducting the search?*'

**Consideration of the questions referred**

40. The case in the main proceedings is the result of a dispute between Google and the CNIL as to how a search engine operator, where it establishes that a data

subject is entitled to have one or more links to web pages containing personal data concerning him or her removed from the list of results which is displayed following a search conducted on the basis of his or her name, is to give effect to that right to de-referencing. Although Directive 95/46 was applicable on the date the request for a preliminary ruling was made, it was repealed with effect from 25 May 2018, from which date Regulation 2016/679 is applicable.

41. The Court will examine the questions referred in the light of both that directive and that regulation in order to ensure that its answers will be of use to the referring court in any event.

42. During the proceedings before the Court, Google explained that, following the bringing of the request for a preliminary ruling, it has implemented a new layout for the national versions of its search engine, in which the domain name entered by the internet user no longer determines the national version of the search engine accessed by that user. Thus, the internet user is now automatically directed to the national version of Google's search engine that corresponds to the place from where he or she is presumed to be conducting the search, and the results of that search are displayed according to that place, which is determined by Google using a geo-location process.

43. In those circumstances, the questions referred, which must be dealt with together, should be understood as seeking to ascertain, in essence, whether Article 12(b) and subparagraph (a) of the first paragraph of Article 14 of Directive 95/46 and Article 17(1) of Regulation 2016/679 are to be interpreted as meaning that, where a search engine operator grants a request for de-referencing pursuant to those provisions, that operator is required to carry out that de-referencing on all versions of its search engine, or whether, on the contrary, it is required to do so only on the versions of that search engine corresponding to all the Member States, or even only on the version corresponding to the Member State in which the request for de-referencing was made, using, where appropriate, the technique known as '*geo-blocking*' in order to ensure that an internet user cannot, regardless of the national version of the search engine used, gain access to the links concerned by the de-referencing in the context of a search conducted from an IP address deemed to be located in the Member State of residence of the person benefiting from the right to de-referencing or, more broadly, in any Member State.

44. As a preliminary point, it should be borne in mind that the Court has held that Article 12(b) and subparagraph (a) of the first paragraph of Article 14 of Directive 95/46 are to be interpreted as meaning that, in order to comply with the rights laid down in those provisions and in so far as the conditions laid down by those provisions are in fact satisfied, the operator of a search engine is obliged to remove from the list of results displayed following a search made on the basis of a person's name links to web pages, published by third parties and containing information relating to that person, also in a case where that name or information is not erased beforehand or simultaneously from those web pages, and even, as the case may be, when its publication in itself on those pages is lawful (judgment of **13 May 2014, Google Spain and Google, C-131/12, EU:C:2014:317, paragraph 88)**.

45. The Court has also stated that, when appraising the conditions for the application of those same provisions, it should inter alia be examined whether the data subject has a right that the information in question relating to him or her personally should, at that point in time, no longer be linked to his or her name by a list of results displayed following a search made on the basis of his or her name, without it being necessary in order to find such a right that the inclusion of the information in question in that list causes prejudice to the data subject. As the data subject may, in the light of his or her fundamental rights under Articles 7 and 8 of the Charter, request that the information in question no longer be made available to the general public on account of its inclusion in such a list of results, those rights override, as a rule, not only the economic interest of the operator of the search engine but also the interest of the general public in having access to that information upon a search relating to the data subject's name. However, that would not be the case if it appeared, for particular reasons, such as the role played by the data subject in public life, that the interference with his or her fundamental rights is justified by the preponderant interest of the general public in having, on account of its inclusion in the list of results, access to the information in question (**judgment of 13 May 2014, Google Spain and Google, C-131/12, EU:C:2014:317, paragraph 99)**.

46. In the context of Regulation 2016/679, that right of a data subject to de-referencing is now based on Article 17 of that regulation, which specifically governs the '*right to erasure*', also referred to, in the heading of that article, as the '*right to be forgotten*'.

47. Pursuant to Article 17(1) of Regulation 2016/679, a data subject has the right to obtain from the controller the erasure of personal data concerning him or her without undue delay and the controller has the obligation to erase personal data without undue delay where one of the grounds listed in that provision applies. Article 17(3) of that regulation specifies that Article 17(1) does not apply to the extent that processing is necessary for one of the reasons listed in the former provision. Those reasons include, in particular, under Article 17(3)(a) of that regulation, the exercise of the right of, inter alia, freedom of information of internet users.

48. It follows from Article 4(1)(a) of Directive 95/46 and Article 3(1) of Regulation 2016/679 that both that directive and that regulation permit data subjects to assert their right to de-referencing against a search engine operator who has one or more establishments in the territory of the Union in the context of activities involving the processing of personal data concerning those data subjects, regardless of whether that processing takes place in the Union or not.

49. In that regard, the Court has held that the processing of personal data is carried out in the context of the activities of an establishment of the controller on the territory of a Member State when the operator of a search engine sets up in a Member State a branch or subsidiary which is intended to promote and sell advertising space offered by that search engine and which orientates its activity towards the inhabitants of that Member State (**judgment of 13 May 2014, Google Spain and Google, C‑131/12, EU:C:2014:317, paragraph 60).**

50. In such circumstances, the activities of the operator of the search engine and those of its establishment situated in the Union are inextricably linked since the activities relating to the advertising space constitute the means of rendering the search engine at issue economically profitable and that search engine is, at the same time, the means enabling those activities to be performed, the display of the list of results being accompanied, on the same page, by the display of advertising linked to the search terms (see, to that effect, **judgment of 13 May 2014, Google Spain and Google, C‑131/12, EU:C:2014:317, paragraphs 56 and 57**).

51. That being so, the fact that the search engine is operated by an undertaking that has its seat in a third State cannot result in the processing of personal data carried out for the purposes of the operation of that search engine in the context of the advertising and commercial activity of an establishment of the controller on the territory of a Member State escaping the obligations and guarantees laid down by Directive 95/46 and Regulation 2016/679 (see, to that effect, **judgment of 13 May 2014, Google Spain and Google, C‑131/12, EU:C:2014:317, paragraph 58).**

52. In the present case, it is apparent from the information provided in the order for reference, first, that Google's establishment in French territory carries on, inter alia, commercial and advertising activities, which are inextricably linked to the processing of personal data carried out for the purposes of operating the search engine concerned, and, second, that that search engine must, in view of, inter alia, the existence of gateways between its various national versions, be regarded as carrying out a single act of personal data processing. The referring court considers that, in those circumstances, that act of processing is carried out within the framework of Google's establishment in French territory. It thus appears that such a situation falls within the territorial scope of Directive 95/46 and Regulation 2016/679.

53. By its questions, the referring court seeks to determine the territorial scope which must be conferred on a de-referencing in such a situation.

54. In that regard, it is apparent from recital 10 of Directive 95/46 and recitals 10, 11 and 13 of Regulation 2016/679, which was adopted on the basis of Article 16 TFEU, that the objective of that directive and that regulation is to guarantee a high level of protection of personal data throughout the European Union.

55. It is true that a de-referencing carried out on all the versions of a search engine would meet that objective in full.

56. The internet is a global network without borders and search engines render the information and links contained in a list of results displayed following a search conducted on the basis of an individual's name ubiquitous (see, to that effect, **judgments of 13 May 2014, Google Spain and Google, C‑131/12, EU:C:2014:317, paragraph 80, and of 17 October 2017, Bolagsupplysningen and Ilsjan, C‑194/16, EU:C:2017:766, paragraph 48**).

57. In a globalised world, internet users' access — including those outside the Union — to the referencing of a link referring to information regarding a person whose centre of interests is situated in the Union is thus likely to have immediate and substantial effects on that person within the Union itself.

58. Such considerations are such as to justify the existence of a competence on the part of the EU legislature to lay down the obligation, for a search engine operator, to carry out, when granting a request for de-referencing made by such a person, a de-referencing on all the versions of its search engine.

59. That being said, it should be emphasised that numerous third States do not recognise the right to de-referencing or have a different approach to that right.

60. Moreover, the right to the protection of personal data is not an absolute right, but must be considered in relation to its function in society and be balanced against other fundamental rights, in accordance with the principle of proportionality (see, to that effect, judgment of 9 November 2010, Volker und Markus Schecke and Eifert, C‑92/09 and C‑93/09, EU:C:2010:662, paragraph 48, and Opinion 1/15 (EU-Canada PNR Agreement) of 26 July 2017, EU:C:2017:592, point 136). Furthermore, the balance between the right to privacy and the protection of personal data, on the one hand, and the freedom of information of internet users, on the other, is likely to vary significantly around the world.

61. While the EU legislature has, in Article 17(3)(a) of Regulation 2016/679, struck a balance between that right and that freedom so far as the Union is concerned (see, to that effect, today's judgment, GC and Others (De-referencing of sensitive data), C‑136/17, paragraph 59), it must be found that, by contrast, it has not, to date, struck such a balance as regards the scope of a de-referencing outside the Union.

62. In particular, it is in no way apparent from the wording of Article 12(b) and subparagraph (a) of the first paragraph of Article 14 of Directive 95/46 or Article 17 of Regulation 2016/679 that the EU legislature would, for the purposes of ensuring that the objective referred to in paragraph 54 above is met, have chosen to confer a scope on the rights enshrined in those provisions which would go beyond the territory of the Member States and that it would have intended to impose on an operator which, like Google, falls within the scope of that directive or that regulation a de-referencing obligation which also concerns the

national versions of its search engine that do not correspond to the Member States.

63. Moreover, although Regulation 2016/679 provides the supervisory authorities of the Member States, in Articles 56 and 60 to 66 thereof, with the instruments and mechanisms enabling them, where appropriate, to cooperate in order to come to a joint decision based on weighing a data subject's right to privacy and the protection of personal data concerning him or her against the interest of the public in various Member States in having access to information, it must be found that EU law does not currently provide for such cooperation instruments and mechanisms as regards the scope of a de-referencing outside the Union.

64. It follows that, currently, there is no obligation under EU law, for a search engine operator who grants a request for de-referencing made by a data subject, as the case may be, following an injunction from a supervisory or judicial authority of a Member State, to carry out such a de-referencing on all the versions of its search engine.

65. Having regard to all of the foregoing, a search engine operator cannot be required, under Article 12(b) and subparagraph (a) of the first paragraph of Article 14 of Directive 95/46 and Article 17(1) of Regulation 2016/679, to carry out a de-referencing on all the versions of its search engine.

66. Regarding the question whether such a de-referencing is to be carried out on the versions of the search engine corresponding to the Member States or only on the version of that search engine corresponding to the Member State of residence of the person benefiting from the de-referencing, it follows from, inter alia, the fact that the EU legislature has now chosen to lay down the rules concerning data protection by way of a regulation, which is directly applicable in all the Member States, which has been done, as is emphasised by recital 10 of Regulation 2016/679, in order to ensure a consistent and high level of protection throughout the European Union and to remove the obstacles to flows of personal data within the Union, that the de-referencing in question is, in principle, supposed to be carried out in respect of all the Member States.

67. However, it should be pointed out that the interest of the public in accessing information may, even within the Union, vary from one Member State to another, meaning that the result of weighing up that interest, on the one hand, and a data subject's rights to privacy and the protection of personal data, on the other, is not necessarily the same for all the Member States, especially since, under Article 9 of Directive 95/46 and Article 85 of Regulation 2016/679, it is for the Member States, in particular as regards processing undertaken solely for journalistic purposes or for the purpose of artistic or literary expression, to provide for the exemptions and derogations necessary to reconcile those rights with, inter alia, the freedom of information.

68. It follows from, inter alia, Articles 56 and 60 of Regulation 2016/679 that, for cross-border processing as defined in Article 4(23) of that regulation, and subject to Article 56(2) thereof, the various national supervisory authorities concerned must cooperate, in accordance with the procedure laid down in those provisions, in order to reach a consensus and a single decision which is binding on all those authorities and with which the controller must ensure compliance as regards processing activities in the context of all its establishments in the Union. Moreover, Article 61(1) of Regulation 2016/679 obliges the supervisory authorities, in particular, to provide each other with relevant information and mutual assistance in order to implement and to apply that regulation in a consistent manner throughout the Union, and Article 63 of that regulation specifies that it is for this purpose that provision has been made for the consistency mechanism set out in Articles 64 and 65 thereof. Lastly, the urgency procedure provided for in Article 66 of Regulation 2016/679 permits the immediate adoption, in exceptional circumstances, where a supervisory authority concerned considers that there is an urgent need to act in order to protect the rights and freedoms of data subjects, of provisional measures intended to produce legal effects on its own territory with a specified period of validity which is not to exceed three months.

69. That regulatory framework thus provides the national supervisory authorities with the instruments and mechanisms necessary to reconcile a data subject's rights to privacy and the protection of personal data with the interest of the whole public throughout the Member States in accessing the information in question and, accordingly, to be able to adopt, where appropriate, a de-referencing decision which covers all searches conducted from the territory of the Union on the basis of that data subject's name.

70. In addition, it is for the search engine operator to take, if necessary, sufficiently effective measures to ensure the effective protection of the data subject's fundamental rights. Those measures must themselves meet all the legal requirements and have the effect of preventing or, at the very least, seriously discouraging internet users in the Member States from gaining access to the links in question using a search conducted on the basis of that data subject's name (see, by analogy, judgments of **27 March 2014, UPC Telekabel Wien, C‑314/12, EU:C:2014:192, paragraph 62**, and of **15 September 2016, McFadden, C‑484/14, EU:C:2016:689, paragraph 96**).

71. It is for the referring court to ascertain whether, also having regard to the recent changes made to its search engine as set out in paragraph 42 above, the measures adopted or proposed by Google meet those requirements.

72. Lastly, it should be emphasised that, while, as noted in paragraph 64 above, EU law does not currently require that the de-referencing granted concern all versions of the search engine in question, it also does not prohibit such a practice. Accordingly, a supervisory or judicial authority of a Member State remains competent to weigh up, in the light of national standards of protection of fundamental rights (see, to

that effect, judgments of 26 February 2013, Åkerberg Fransson, C‑617/10, EU:C:2013:105, paragraph 29, and of 26 February 2013, Melloni, C‑399/11, EU:C:2013:107, paragraph 60), a data subject's right to privacy and the protection of personal data concerning him or her, on the one hand, and the right to freedom of information, on the other, and, after weighing those rights against each other, to order, where appropriate, the operator of that search engine to carry out a de-referencing concerning all versions of that search engine.

73. In the light of all of the foregoing, the answer to the questions referred is that, on a proper construction of Article 12(b) and subparagraph (a) of the first paragraph of Article 14 of Directive 95/46 and Article 17(1) of Regulation 2016/679, where a search engine operator grants a request for de-referencing pursuant to those provisions, that operator is not required to carry out that de-referencing on all versions of its search engine, but on the versions of that search engine corresponding to all the Member States, using, where necessary, measures which, while meeting the legal requirements, effectively prevent or, at the very least, seriously discourage an internet user conducting a search from one of the Member States on the basis of a data subject's name from gaining access, via the list of results displayed following that search, to the links which are the subject of that request.

**Costs**

74. Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the national court, the decision on costs is a matter for that court. Costs incurred in submitting observations to the Court, other than the costs of those parties, are not recoverable.

On those grounds, the Court (Grand Chamber) hereby rules:

On a proper construction of Article 12(b) and subparagraph (a) of the first paragraph of Article 14 of Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data, and of Article 17(1) of Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of individuals with regard to the processing of personal data and on the free movement of such data and repealing Directive 95/46 (General Data Protection Regulation), where a search engine operator grants a request for de-referencing pursuant to those provisions, that operator is not required to carry out that de-referencing on all versions of its search engine, but on the versions of that search engine corresponding to all the Member States, using, where necessary, measures which, while meeting the legal requirements, effectively prevent or, at the very least, seriously discourage an internet user conducting a search from one of the Member States on the basis of a data subject's name from gaining access, via the list of results displayed following that search, to the links which are the subject of that request.

[Signatures]

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**OPINION OF ADVOCATE GENERAL TANCHEV**

delivered on 22 November 2018(1)

Case C‑501/17

Germanwings GmbH

v

Wolfgang Pauels

(Request for a preliminary ruling from the Landgericht Köln (Regional Court, Cologne, Germany))

(Reference for a preliminary ruling — Air transport — Regulation (EC) No 261/2004 — Compensation to passengers in the event of denied boarding and of cancellation or long delay of flights — Right to compensation — Exemption — Notion of *'extraordinary circumstances'* — Foreign object damage (FOD) — Damage to an aircraft tyre caused by a screw lying on the take-off or landing runway)

1. In the present reference for a preliminary ruling the Court will literally have to get down to the *'nuts and bolts'* of the notion of *'extraordinary circumstances'* in the context of compensation to passengers in the event of denied boarding, cancellation, or long delay of flights. This is so because, in this case, damage to an aircraft tyre was caused by a screw lying on either the take-off or landing runway of the flight concerned (*'the event at issue'*).

2. The reference seeks interpretation of Article 5(3) of Regulation (EC) No 261/2004, (2) and has been submitted by the Landgericht Köln (Regional Court, Cologne, Germany) in the context of a dispute between Mr Wolfgang Pauels and Germanwings GmbH, an air carrier, in relation to a refusal by the latter to compensate this particular passenger, who suffered a significant delay to his flight.

3. The underlying economic stakes are considerable. According to statistics that the UK Civil Aviation Authority has provided to the European Commission, the extraordinary circumstances defence makes up *'about 30 % of all complaints'* and deplete *'more than 70 % of the resources of national authorities'*. (3) The importance of the notion of extraordinary circumstances can therefore not be overstated. (4)

**I. Legal context**

4. Recitals 1, 4, 14 and 15 of the Flight Passenger Rights Regulation read as follows:

*'(1) Action by the Community in the field of air transport should aim, among other things, at ensuring a high level of protection for passengers. Moreover, full account should be taken of the requirements of consumer protection in general.*

…

*(4) The Community should therefore raise the standards of protection set by that Regulation both to strengthen the rights of passengers and to ensure that air carriers operate under harmonised conditions in a liberalised market.*

…

*(14) As under the Montreal Convention, obligations on operating air carriers should be limited or excluded in cases where an event has been caused by extraordinary circumstances which could not have been avoided even if all reasonable measures had been taken. Such circumstances may, in particular, occur in cases of political instability, meteorological conditions incompatible with the operation of the flight concerned, security risks, unexpected flight safety shortcomings and strikes that affect the operation of an operating air carrier.*

*(15) Extraordinary circumstances should be deemed to exist where the impact of an air traffic management decision in relation to a particular aircraft on a particular day gives rise to a long delay, an overnight delay, or the cancellation of one or more flights by that aircraft, even though all reasonable measures had been taken by the air carrier concerned to avoid the delays or cancellations.'*

5. Under the heading *'Cancellation'*, Article 5(1) and (3) of the regulation provides as follows:

*'1. In case of cancellation of a flight, the passengers concerned shall:*

*…*

*(c) have the right to compensation by the operating air carrier in accordance with Article 7, unless:*

*(i) they are informed of the cancellation at least two weeks before the scheduled time of departure; or*

*(ii) they are informed of the cancellation between two weeks and seven days before the scheduled time of departure and are offered re-routing, allowing them to depart no more than two hours before the scheduled time of departure and to reach their final destination less than four hours after the scheduled time of arrival;*

*(iii) they are informed of the cancellation less than seven days before the scheduled time of departure and are offered re-routing, allowing them to depart no more than one hour before the scheduled time of departure and to reach their final destination less than two hours after the scheduled time of arrival.*

*…*

*3. An operating air carrier shall not be obliged to pay compensation in accordance with Article 7 if it can prove that the cancellation is caused by extraordinary circumstances which could not have been avoided even if all reasonable measures had been taken.'*

6. Under the heading *'Right to compensation'*, Article 7(1)(a) of the Flight Passenger Rights Regulation provides:

*'1. Where reference is made to this Article, passengers shall receive compensation amounting to:*

*(a) EUR 250 for all flights of 1 500 kilometres or less;*

*…'*

7. Article 13 of this regulation, entitled *'Right of redress'*, reads as follows:

*'In cases where an operating air carrier pays compensation or meets the other obligations incumbent on it under this Regulation, no provision of this Regulation may be interpreted as restricting its right to seek compensation from any person, including third parties, in accordance with the law applicable. In particular, this Regulation shall in no way restrict the operating air carrier's right to seek reimbursement from a tour operator or another person with whom the operating air carrier has a contract. Similarly, no provision of this Regulation may be interpreted as restricting the right of a tour operator or a third party, other than a passenger, with whom an operating air carrier has a contract, to seek reimbursement or compensation from the operating air carrier in accordance with applicable relevant laws.'*

**II. Facts giving rise to the dispute in the main proceedings and the question referred for a preliminary ruling**

8. Mr Pauels booked a flight with Germanwings for 28 August 2015 from Dublin to Düsseldorf. The flight was scheduled to arrive in Düsseldorf at 14.30 local time.

9. In fact, the flight arrived in Düsseldorf at 17.48 local time, that is to say, more than three hours late.

10. Germanwings counters Mr Pauels' demand for compensation by stating that, during the preparations for take-off of the flight at issue, a screw was found in a tyre of the aircraft used for the flight. The screw had inserted itself into the tyre on the take-off runway in Düsseldorf, or on the landing runway used by the preceding flight in Dublin. For that reason, the tyre had to be changed, which led to the delay.

11. Germanwings takes the view that the harmful event is an extraordinary circumstance within the meaning of Article 5(3) of the Flight Passenger Rights Regulation, on the basis of which it is exempt from liability. Accordingly, it submits, it is not required to pay compensation.

12. The Amtsgericht Köln (Local Court, Cologne, Germany) ordered Germanwings, in accordance with the terms of the application, to pay to Mr Pauels EUR 250, together with interest on that amount as from 16 September 2015 until payment, at the rate of 5 % above the base rate.

13. The above court accepted as true Germanwings' submission, disputed by Mr Pauels, as to the cause of the significant delay in arrival in Düsseldorf, and essentially stated in that connection that Germanwings was not exempt, by virtue of that fact, from its obligation to pay compensation, because damage to an aircraft tyre by a screw lying on the take-off or landing runway is a circumstance that may arise in the course of normal flight operations and is controllable. This is also in line with the German legislature's view, as evidenced by the statutory rules on airfield supervision. The management of air-travel operations covers not only the flight operations of the relevant undertaking in the narrower sense, such as take-off, flight and landing, but also all airport services provided by third parties and used by the airline, without which normal flight operations would not be possible. According to the Amtsgericht Köln (Local Court, Cologne), this was made clear by the Court of Justice in its order of 14 November 2014, Siewert (C‑394/14, EU:C:2014:2377).

14. Germanwings lodged an appeal against the judgment of the Amtsgericht. It contends that the lower

court is overestimating what is within Germanwings' control, and is disregarding the fact that the Court did not rule that all services provided by a third party and used by the air carrier form part of its flight operations.

15. The referring court points out that the above order in Siewert concerned damage to an aircraft by mobile boarding stairs which are brought alongside the aircraft in order to enable passengers to embark, that is to say, the employment of a service provider in connection with a specific flight operated by the air carrier. To enable passengers to embark on the flight they have booked is one of the air carrier's tasks. To that extent, the facts of the present case are by their very nature not comparable. In the present case, the aircraft was accidentally damaged owing to use of the take-off and landing runway which is similarly used by all air carriers. Accordingly, such use is to be attributed to general air traffic and cannot be considered as one of the specific tasks of the air carrier. Nor, it argues, does the cleaning of the take-off and landing runways form part of the duties of the air carrier, and is therefore also not a matter within Germanwings' control. The cleaning of runways is not specific to any individual flight operated by an air carrier, or to the safe embarkation or disembarkation of passengers to and from the flight that has been booked, but rather relates to airport safety and thus the safety of air traffic in general.

16. Germanwings further contends that it cannot share the view of the first-instance court because, under that view, it would be impossible for a circumstance preventing the operation of a planned flight to constitute a circumstance '*not inherent in the normal exercise of the activity of an air carrier*'. Thus, the fundamental requirement for a finding that there is an extraordinary circumstance, in the event of a technical defect, that is to say, that it is an event '*not inherent in the normal exercise of the activity of the air carrier concerned*' would thereby be rendered otiose.

17. All this being so, the Landgericht Köln (Regional Court, Cologne) considers that the determination of the appeal depends on whether the damage to an aircraft tyre by a screw lying on the landing or take-off runway is an extraordinary circumstance within the meaning of Article 5(3) of the Flight Passenger Rights Regulation. Therefore, it decided to refer the following question to the Court for a preliminary ruling:

*'Is the damage to an aircraft tyre caused by a screw lying on the take-off or landing runway (foreign object damage/FOD) an extraordinary circumstance within the meaning of Article 5(3) of [the Flight Passenger Rights Regulation]?'*

**III. Procedure before the Court**

18. Written observations were submitted by Mr Pauels, the German and Polish Governments as well as by the Commission. At the hearing, which took place on 17 September 2018, Germanwings and all the above parties (except for the Polish Government) presented oral argument.

**IV. Analysis**

**A. Brief summary of the observations of the parties**

19. First of all, so far as concerns admissibility, the Commission submits that the present reference for a preliminary ruling potentially raises doubts in this respect. As regards the content of the reference, the Commission submits that the reference refers to allegations of the parties which the referring court has presumed to be correct, rather than to established facts. The Commission takes the view that if subsequent measures of inquiry were to call into question the facts presumed to be correct by the referring court, then the pertinence of the reference for a preliminary ruling could disappear. In any event, the Commission concludes that the reference is admissible.

20. As regards substance, Mr Pauels submits that damage to the aircraft tyre caused by a screw lying on the take-off or landing runway is not an extraordinary circumstance. He contends that such an event is inherent in the activity of an air carrier. The presence of foreign objects on the runway is a situation which may arise on a daily basis, the air carriers are well aware of this problem and the cleaning of the runway is among the habitual tasks of airport operators. He adds that aircraft tyres, which are subject to extreme pressure, are regularly inspected in the context of pre-flight checks and need to be regularly replaced. Therefore, an event such as the one at issue here may not be regarded as not inherent in the air carrier's activity; not least because the notion of an '*extraordinary circumstance*' must be interpreted strictly.

21. Should such an event be nevertheless regarded as not inherent in the air carrier's activity, it should be regarded as effectively controllable, by reason of its nature or its origin, given that runways are subject to regular inspection by airport operators.

22. The German and Polish Governments as well as the Commission contend that the damage to the aircraft tyre caused by a screw lying on the take-off or landing runway constitutes an '*extraordinary circumstance*'.

23. According to the German Government, the risk related to the presence of foreign objects on runways is inevitable for the air carrier and is not controllable by it. The presence of foreign objects has a cause which is external to the air carrier, without any link to the carrying out of the flight in question — contrary to the premature defects of certain parts of an aircraft which arise in spite of regular service and which were at issue in Wallentin-Hermann (5) and van der Lans. (6) The fact that air carriers may be exposed more regularly to a situation where a tyre is damaged by a foreign object on the runway does not exclude its qualification as an extraordinary circumstance, given the fact that the frequency of events has not been taken into account as a differentiating criterion. (7) Moreover, the German Government insists on the absence of misconduct on the part of the airport operator which could be attributed to the air carrier in question. In casu, that operator did not fail to comply with its obligations as to maintenance and operation. Were one to impose stricter controls than those already in place, it would have a seriously adverse effect on air traffic.

24. The Polish Government submits that damage such as that at issue, caused by a third person failing to fulfil its obligations, is not among the normal activities of an air carrier. Given the fact that it cannot foresee that the airport operator will fail to fulfil its obligations, the air carrier does not have to take into account the risk that its aircraft may be damaged in this respect. In that context, the air carrier may merely be held responsible for speedy repairs to the damaged aircraft.
25. According to the Commission, the event at issue is not inherent in the normal exercise of an air carrier's activity and is not controllable by it. In this respect, it is not intrinsically linked to the functioning of the system of an aircraft — contrary notably to mobile boarding stairs. In this sense, it is comparable to a bird strike, which is also not controllable by the air carrier. This absence of control of the air carrier is confirmed by the fact that the security and inspection of runways falls under the responsibility of airport operators. Finally, the fact that the incident took place at the landing or take-off of the preceding flight does not preclude its qualification as an '*extraordinary circumstance*'. (8)

**B. Assessment**

**1. Preliminary remarks**

26. In my view, the admissibility of the reference for a preliminary ruling is not a live issue in this case in so far as it is only the Commission that has raised it (9) — in what are effectively theoretical remarks — and the Commission concludes itself that the reference is not, in any case, inadmissible. First, in the context of the cooperation between the Court and the national courts, questions relating to EU law benefit from the presumption of relevance. (10) Secondly, it follows from the Court's case-law that EU law does not prohibit the referring court, after the delivery of the preliminary ruling, from hearing the parties again and/or from undertaking further inquiries, which might lead it to alter the findings of fact or law made in the request for a preliminary ruling, provided that the referring court gives full effect to the interpretation of EU law adopted by the Court. (11)
27. So far as concerns substance, in the order for reference, the referring court considers that there is an extraordinary circumstance in the present case. Indeed, the referring court has already held in several sets of proceedings prior to the current legal dispute that damage to a tyre or other technical aircraft malfunction caused by small items lying on the runway, such as nails or similar objects, constitutes an extraordinary circumstance exempting the air carrier from the duty to pay compensation to its passengers.
28. I have reached the conclusion that this approach is correct. (12) In my analysis below I will deal, in particular, with the Court's case-law and with the notion of extraordinary circumstances in relation to technical problems. Next, I will apply the Court's two-limb test: (i) the problem must be attributable to an event which is not inherent in the normal exercise of the activity of the air carrier concerned; and (ii), owing to its nature or origin, it is beyond the air carrier's control. Finally, I will address the additional condition of reasonable measures and the avoidance/prevention of the extraordinary circumstance(s). I will conclude that the damage to an aircraft tyre caused by a screw lying on the take-off or landing runway falls within the scope of the notion of an '*extraordinary circumstance*' within the meaning of Article 5(3) of the Flight Passenger Rights Regulation.
29. I add that it is particularly necessary for the Court to clarify this issue in so far as in Germany (as well as in other Member States (13)) the national case-law does not treat in a uniform manner the question whether or not an event such as the one at issue here should constitute an '*extraordinary circumstance*' within the meaning of that provision.
30. For instance, in Germany, various first-instance courts and indeed a decision of a different chamber of the referring court (14) (which are consequent upon the decision of the Court on the mobile boarding stairs in Siewert (15)) have taken the opposite view and ruled that there is no '*extraordinary circumstance*' in a case such as this one.
31. Therefore, clarification of this issue has clear practical significance and will also help improve legal certainty for passengers and air carriers alike.
32. The Court has already had several opportunities to interpret Article 5(3) of the Flight Passenger Rights Regulation. A brief overview of these cases follows.
33. In Pešková and Peška, (16) which is particularly pertinent in this case, the Court held that a collision between an aircraft and a bird, as well as the damage caused by it, are not intrinsically linked to the operating system of the aircraft and are not by their nature or origin inherent in the normal exercise of the activity of the air carrier, and, furthermore, escape its actual control — thus such a collision constitutes an extraordinary circumstance.
34. In McDonagh, (17) the Court also included in that notion the closure of air space due to the eruption of the Icelandic volcano Eyjafjallajökull.
35. On the other hand, in van der Lans, (18) the Court ruled that a technical problem which occurs unexpectedly, which is not attributable to poor maintenance and which is also not detected during routine maintenance checks, does not fall within the definition of '*extraordinary circumstances*' within the meaning of Article 5(3).
36. In Wallentin-Hermann (19) and Sturgeon and Others, (20) the Court established that a technical problem which befell an aircraft does not fall within that notion, unless it is due to events which, by their nature or origin, are not inherent in the normal exercise of the activity of the air carrier and escape its actual control.
37. In Siewert, (21) the Court ruled that a situation in which an airport's set of mobile boarding stairs collides with an aircraft cannot be categorised as '*extraordinary circumstances*'. I will come back to this case later.

**2. The notion of extraordinary circumstances in relation to technical problems**

38. First of all, it is important to note that this notion is neither defined nor clearly established in the Flight Passenger Rights Regulation.
39. In response to this, the Court has set out a rule-exception principle: as a rule technical defects fall under the operational risk of the air carrier, because they are part of the normal exercise of its activity and it is only exceptionally that they can constitute an extraordinary circumstance (in principle, when they are not inherent in the normal exercise of the air carrier's activity and when they are outside its control).
40. The Court has recalled recently in Pešková and Peška (22) that the EU legislature has laid down the obligations of air carriers to compensate passengers in the event of cancellation or long delay of flights — that is, a delay equal to or in excess of three hours — in Article 5(1) of the Flight Passenger Rights Regulation. By way of derogation from Article 5(1) of that regulation, recitals 14 and 15 and its Article 5(3) state that an air carrier is to be released from its obligation to pay passengers compensation under Article 7 of the Flight Passenger Rights Regulation if the carrier can prove that the cancellation or delay is caused by extraordinary circumstances which could not have been avoided even if all reasonable measures had been taken. Article 5(3) must therefore be interpreted strictly. (23)
41. The Court has held that *'it cannot be ruled out that technical problems are covered by those [extraordinary] circumstances to the extent that they stem from events which are not inherent in the normal exercise of the activity of the air carrier concerned and are beyond its actual control. That would be the case, for example, in the situation where it was revealed by the manufacturer of the aircraft comprising the fleet of the air carrier concerned, or by a competent authority, that those aircraft, although already in service, are affected by a hidden manufacturing defect which impinges on flight safety. The same would hold for damage to aircraft caused by acts of sabotage or terrorism'*. (24)
42. The event (and the damage) at issue here belongs to the category of technical problems and, thus, *'unexpected flight safety shortcomings'* mentioned in recital 14 of the Flight Passenger Rights Regulation.
43. As such, we are clearly not dealing with a hidden manufacturing defect impinging on flight safety, which is one example of a technical problem the Court has considered may amount to an *'extraordinary circumstance'* (judgments in Wallentin-Hermann and van der Lans (25)).
44. However, I agree with the Commission that the above case-law ought to be interpreted in the sense that the Court, when giving the example of a hidden manufacturing defect, simply sought to make it clear that technical defects ensuing from events which are outside the scope of the control of the air carrier concerned should be considered to constitute extraordinary circumstances.
45. Indeed, as pointed out by the German Government, the Court held in McDonagh (26) that, *'in accordance with everyday language, the words "extraordinary circumstances" literally refer to circumstances which are "out of the ordinary". In the context of air transport, they refer to an event which is not inherent in the normal exercise of the activity of the carrier concerned and is beyond the actual control of that carrier on account of its nature or origin … In other words, … they relate to all circumstances which are beyond the control of the air carrier, whatever the nature of those circumstances or their gravity'*.
46. Moreover, this is also supported by the travaux préparatoires relating to Article 5(3) of the Flight Passenger Rights Regulation. In the course of these, the term *'force majeure'* was altered to *'extraordinary circumstances'*. According to the Council's statement in the Common Position, this change was made in the interests of legal clarity. (27)
47. It follows from the above that the Court did not seek to restrict the terms *'extraordinary circumstances'* so as to include technical defects only where their origin is similar to that of a hidden manufacturing defect.
48. The Court's case-law to date on technical problems as extraordinary circumstances under Article 5(3) of the Flight Passenger Rights Regulation has established a two-limb test: (i) the problem must be attributable to an event — such as the events set out in recital 14 of that regulation — which is not inherent in the normal exercise of the activity of the air carrier concerned (first limb); and (ii), owing to its nature or origin, it is beyond the air carrier's control (second limb). It should be pointed out that these two limbs (conditions) need to be assessed on a case-by-case basis and are cumulative. (28) I shall deal with them in turn below.

**(a) Inherency**

49. In relation to the first limb mentioned in the point above (inherency), one needs to bear in mind that the Court took a restrictive approach to the availability of the defence in the event of technical problems in its Wallentin-Hermann (29) line of case-law.
50. All the parties (save for Mr Pauels) submit that the event at issue (i.e. the damage to the aircraft tyre caused by a screw lying on the take-off or landing runway) is not inherent in the normal exercise of the activity of the air carrier concerned.
51. The Court held in Pešková and Peška(30) that *'the premature failure of certain parts of an aircraft does not constitute extraordinary circumstances, since such a breakdown remains intrinsically linked to the operating system of the aircraft. That unexpected event is not outside the actual control of the air carrier, since it is required to ensure the maintenance and proper functioning of the aircraft it operates for the purposes of its business'*.
52. However, it ruled in the next paragraph (24) of that judgment that *'a collision between an aircraft and a bird, as well as any damage caused by that collision, since they are not intrinsically linked to the operating system of the aircraft, are not by their nature or origin inherent in the normal exercise of the activity of the air carrier concerned and are outside its actual control.*

*Accordingly, that collision must be classified as "extraordinary circumstances" within the meaning of Article 5(3) of [the Flight Passenger Rights Regulation]'.*

53. To my mind, the facts underlying that judgment and those at issue here are comparable. Indeed, while the event at issue is comparable to a bird strike (Pešková and Peška (31)), I stress that it is not comparable to the collision of mobile boarding stairs with an aircraft (Siewert (32)).

54. What was decisive for the Court in Siewert was that the stairs were indispensable to air passenger transport, and there lies the decisive difference between that case and the damage to a tyre caused by a foreign object on the runway at issue here.

55. Unlike mobile boarding stairs, which are used purposefully by air carriers to board and disembark passengers, a screw was lying in this case on the runway without the air carrier's knowledge and independently of/against its will.

56. As the Commission has pointed out, these objects may lead to damage, but this falls outside the scope of the normal exercise of the activity of the air carrier concerned.

57. It is true that the use of a runway undoubtedly forms part of the normal exercise of the activity of the air carrier concerned, as Mr Pauels has repeated on several occasions. However, that in and of itself is not decisive. Indeed, the use of the airspace also undoubtedly forms part of the normal exercise of the activity of an air carrier and yet the Court has ruled that a bird strike constituted an extraordinary circumstance: this is not intrinsically linked to the operating system of the aircraft.

58. It follows that screws lying on runways are also not intrinsically linked to the operating system of the aircraft. On the contrary, screws and other foreign objects on the runway are to be avoided in so far as possible, since they pose a considerable safety risk and aircraft should not come into contact with such objects.

59. Next, Mr Pauels argued in substance that the event at issue is a frequent and common problem and on that basis could not constitute an extraordinary circumstance.

60. It follows from the order for reference that a situation in which an aircraft tyre is damaged in the course of take-off or landing by a screw or comparable foreign object which has fallen on to the runway is not an extremely infrequent occurrence. This does not mean, in my view, that the frequency of the event should constitute a limiting/differentiating criterion.

61. A similar argument was defended by Advocate General Bot in Pešková and Peška. (33) He argued that such events (bird strikes) could not constitute an extraordinary circumstance, because collisions between birds and aircraft were a common occurrence and a phenomenon known to the various economic actors operating in air transport. However, the Court did not follow this reasoning and came to the conclusion that, in spite of those arguments, a bird strike did constitute an extraordinary circumstance.

62. It follows from the above that the event at issue is not inherent in the normal exercise of the activity of the air carrier concerned.

**(b) Control**

63. Next, as far as the second limb of the test is concerned (control), I consider that, in the present case, the air carrier whose aircraft suffers damage to one of its tyres due to a foreign object lying on the runway is faced with an event which is outside its actual control.

64. This is because the maintenance and cleaning of the runways is not the responsibility of the air carrier, but that of the airport operator.

65. As the referring court has already rightly held in its judgment of 19 January 2016, (34) in recital 14, relating to Article 5(3) of the Flight Passenger Rights Regulation, the EU legislature merely gave examples of extraordinary circumstances but the examples listed show that these are factors arising outside the organisational and technical responsibility of the carrier, which cannot be influenced by it and, accordingly, cannot be averted. They are also outside the so-called operational risk to which the aircraft is exposed. Since runway safety and supervision are the obligation of the relevant airport operator, and runways are regularly checked by it for foreign objects, the air carriers themselves have no influence on the carrying out, and the number, of checks, nor are they allowed to carry them out themselves (nor, for that matter, do they have means for doing so).

66. In fact, the referring court holds that foreign objects on runways are a risk beyond the control of the air carriers and, unlike the premature malfunction of specific aircraft components, notwithstanding regular maintenance, they constitute a supervening extraneous event. (35)

67. Be that as it may, I agree with the referring court that foreign objects on runways which cause damage to the aircraft are to be classified as extraordinary circumstances within the meaning of Article 5(3) of the Flight Passenger Rights Regulation.

68. As the Polish Government pointed out, the surveillance of the condition of the runway falls under the responsibility of the airport operator and not under that of the air carrier. Thus, the damage to a part of aircraft caused by a foreign object could at most be the result of the failure to fulfil obligations on the part of the airport operator.

69. Indeed, this responsibility of the airport operator follows notably from Commission Regulation (EU) No 139/2014 (36) as well as from applicable national law.

70. Annex IV to that regulation, *'Subpart C — Aerodrome maintenance (ADR.OPS.C)'*, provides under *'ADR.OPS.C.010 Pavements, other ground surfaces and drainage'* that *'(a) The aerodrome operator shall inspect the surfaces of all movement areas including pavements (runways, taxiways and aprons), adjacent areas and drainage to regularly assess their condition as part of an aerodrome preventive and corrective maintenance programme'* and *'(b) The aerodrome operator shall inter alia: (1) maintain the surfaces of all movement areas with the*

*objective of avoiding and eliminating any loose object/debris that might cause damage to aircraft or impair the operation of aircraft systems; (2) maintain the surface of runways, taxiways and aprons in order to prevent the formation of harmful irregularities'*.

71. I consider (as does the referring court) that, as foreign bodies on the runway, screws, nails or other small items, do not serve flight-operation purposes, they constitute a safety risk. The fact that they fall onto the runway is a randomly occurring event which the air carrier is simply unable to predict and, within the operational sphere of the undertaking, is outside its control. As with measures for scaring birds away which are intended to prevent a bird strike, measures to preserve the runway from the presence of foreign objects on it do not relate to a specific flight by an air carrier or the safe boarding or disembarkation of passengers to and from the flight booked, but, rather, concern the safety of airports and of air traffic in general. As a matter of principle, therefore, they do not come within the sphere of responsibility of the individual air carrier but are in a specific case the responsibility of the airport operator, which must assess the appropriateness of measures to be taken and must select suitable and effective means by which to remedy the situation. (37)

72. Mr Pauels argues that aircraft tyres are subject to extreme stress on take-off and landing, are regularly inspected in the context of pre-flight checks and need to be regularly replaced by the air carrier, (38) and that this should preclude the event at issue from being qualified as an extraordinary circumstance.

73. However, in my view, it does not follow from the above argument that the event at issue should be considered to be inherent in the normal exercise of the activity of the air carrier concerned and/or within its control.

74. Similarly to what the Court held in Pešková and Peška (39) in relation to a bird strike, the presence of a screw on the runway causing the damage to the aircraft is extraneous to the activity of the air carrier, because it has nothing to do with the extreme stress and the requirements during the take-off and landing of aircraft. The event at issue cannot be avoided by way of changing the tyres when they reach the limit of wear; indeed, even a brand-new tyre may be damaged by a screw lying on the runway.

75. Therefore, contrary to the arguments made in the written observations of Mr Pauels, the present case cannot be compared to Siewert. (40)

76. It may be helpful to point out the approach of the Bundesgerichtshof (Federal Court of Justice, Germany) with respect to what falls within the scope of normal exercise of the activity of an air carrier (in a judgment concerning a bird-strike case). (41) The Bundesgerichtshof (Federal Court of Justice) held that it would not fall within that scope if the measure adopted were to seek to ensure the functioning of air transport as a whole. It is therefore an air-safety measure and not a measure of the air carrier concerned. Thus, according to the Bundesgerichtshof (Federal Court of Justice), measures which concern the service or activity of a single aircraft come within the scope of the activity of the air carrier concerned (e.g. also the transport of passengers), but measures which do not concern the operation of a particular aircraft are measures which may constitute an extraordinary circumstance in so far as they do not come within the scope of the activity of the air carrier concerned.

77. Thus, in the present case the measures which could have been taken to avoid the damage to the tyre at issue in the main proceedings were beyond the powers of the air carrier. Moreover, the measures which could have been taken by the airport operator do not concern the operation of a specific flight, but rather the general guarantee that air traffic flows at the relevant airport. Runways are not maintained for a specific flight. They are maintained to ensure the smooth running of air traffic as a whole.

78. Finally, I consider (as does the Commission) that the qualification of an *'extraordinary circumstance'* in the present case is equally justified by the objective of ensuring a high level of protection for air passengers pursued by the Flight Passenger Rights Regulation; for that reason, one should not encourage air carriers to refrain from taking the measures necessitated by foreign object damage by prioritising the maintenance and punctuality of their flights over the objective of safety. (42)

79. It follows from the above that the event at issue meets the control test and is an event which is outside the air carrier's actual control.

**3. Reasonable measures to avoid extraordinary circumstances**

80. According to the Court's case-law, (43) *'since not all extraordinary circumstances confer exemption, the onus is on the party seeking to rely on them to establish, in addition, that they could not on any view have been avoided by measures appropriate to the situation, that is to say, by measures which, at the time those extraordinary circumstances arise, meet, inter alia, conditions which are technically and economically viable for the air carrier concerned. Indeed, that air carrier must … establish that, even if it had deployed all its resources in terms of staff or equipment and the financial means at its disposal, it would clearly not have been able, unless it had made intolerable sacrifices in the light of the capacities of its undertaking at the relevant time, to prevent the extraordinary circumstances with which it was confronted from leading to the cancellation of the flight'* (emphasis added).

81. It is true that the question referred for a preliminary ruling does not relate explicitly to the additional condition of reasonable measures and the avoidance/prevention of the extraordinary circumstance(s).

82. However, given that the referring court will have the task of assessing whether, in the circumstances of the present case, the air carrier could be regarded as having taken all measures appropriate to the situation, I consider that — in order to provide the referring court

with an appropriate answer for the purpose of the application of EU law in the dispute before it — it is helpful to address this condition as well. (44)

83. Indeed, the Court has held that *'the fact that a national court has, formally speaking, worded its request for a preliminary ruling with reference to certain provisions of EU law does not preclude the Court of Justice from providing to the national court all the elements of interpretation which may be of assistance in adjudicating on the case pending before it, whether or not that court has referred to them in its questions. It is for the Court to extract from all the information provided by the national court, in particular from the grounds of the order for reference, the points of EU law which require interpretation, having regard to the subject matter of the dispute'*. (45)

84. It is established in the Court's case-law that the concept of reasonable measures is an individualised and flexible one, (46) and 'only those measures which can actually be [the air carrier's] responsibility must be taken into account, excluding those which are the responsibility of other parties, such as, inter alia, airport managers or the competent air traffic controllers'. (47)

85. The national court must, therefore, *'assess whether, in particular at the technical and administrative levels, the air carrier concerned was … actually in a position to take, directly or indirectly, preventative measures likely to reduce and even prevent the risks of [damage to tyres due to foreign objects lying on the runway]'*. (48)

86. It follows from all the foregoing considerations that Article 5(3) of the Flight Passenger Rights Regulation must be interpreted as meaning that damage to an aircraft tyre caused by a screw lying on the take-off or landing runway falls within the scope of the notion of an *'extraordinary circumstance'* within the meaning of that provision.

87. Having said that, I would point out that it is not each and every replacement of an aircraft tyre that will qualify as an extraordinary circumstance: it is necessary to distinguish the damage to the tyre in the present case from that which is due to normal wear and tear — with the result that the latter would not constitute an extraordinary circumstance.

**V. Conclusion**

88. For those reasons, I propose that the Court answers the question referred for a preliminary ruling by the Landgericht Köln (Regional Court, Cologne, Germany) as follows:

Article 5(3) of Regulation (EC) No 261/2004 of the European Parliament and of the Council of 11 February 2004 establishing common rules on compensation and assistance to passengers in the event of denied boarding and of cancellation or long delay of flights must be interpreted as meaning that damage to an aircraft tyre caused by a screw lying on the take-off or landing runway falls within the scope of the notion of an *'extraordinary circumstance'* within the meaning of that provision.

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1 Original language: English.

2 Regulation of the European Parliament and of the Council of 11 February 2004 establishing common rules on compensation and assistance to passengers in the event of denied boarding and of cancellation or long delay of flights, and repealing Regulation (EEC) No 295/91 (*'the Flight Passenger Rights Regulation'*).

3 See Prassl, J., *'Exceptionally Unexceptional: C‑257/14 Corina van der Lans v KLM and the end of Regulation 261/2004*'s Exceptional Circumstances Defence', EuCML, 2016, p. 136. The author also cites the airlines' exceptionally *'stubborn refus[al] to comply in full with their obligations, until dragged to court'*.

4 Malenovsky, J., *'Regulation 261: Three Major Issues in the Case Law of the Court of Justice of the EU'*, in Bobek, M., and Prassl, J. (eds), EU Law in the Member States: Air Passenger Rights, Ten Years On, Hart, 2016, pp. 25 and 30.

5 Judgment of 22 December 2008 (C‑549/07, EU:C:2008:771).

6 Judgment of 17 September 2015, van der Lansvan der Lans (C‑257/14, EU:C:2015:618).

7 Judgment of 4 May 2017, Pešková and PeškaPešková and PeškaPešková and Peška (C‑315/15, EU:C:2017:342).

8 This follows from the judgment of 4 May 2017, Pešková and PeškaPešková and PeškaPešková and Peška (C‑315/15, EU:C:2017:342).

9 Moreover, none of the parties considered it necessary to address this issue at the hearing before the Court.

10 See, for instance, judgment of 16 December 2008, Cartesio (C‑210/06, EU:C:2008:723, paragraph 67).

11 Judgment of 5 July 2016, Ognyanov (C‑614/14, EU:C:2016:514, paragraph 30 and point 2 of the operative part).

12 On the concept of extraordinary circumstances, see Milner, A., *'Regulation EC 261/2004 and "Extraordinary Circumstances"', Air & Space Law, 34, no. 3 (2009), pp. 215-220; van der Wijngaart, T., 'van der Lans v. KLM and 'Extraordinary Circumstances"', Air & Space Law, 41, no. 1 (2016), pp. 59-62; Michel, V., 'Commentaires: Une grève sauvage ne constitue pas une circonstance extraordinaire exonérant le transporteur'*, Europe, Number 6, June 2018, pp. 22-23; Flöthmann, M., *'Verbraucherschutz: Ausgleichszahlungen nach Flugausfall trotz "wilden Streiks" des Flugpersonals (Anmerkung)'*, EuZW, 2018, 457; Herrmann, C., *'Entschädigung der Fluggäste bei „wildem Streik" — das TUIfly-Urteil des EuGH'*, RRa, 3/2018, p. 102; Führich, E., *'Innenbetrieblicher "wilder Streik" als außergewöhnlicher Umstand der Fluggastrechte-Verordnung'*, Monatsschrift fúr Deutsches Recht, 13/2018;

13 This follows inter alia from Prassl, J., *'Tackling Diversity Through Uniformity?'*, in Bobek, M., and Prassl, J., op. cit., p. 335, van der Wijngaart, T., op. cit., Führich, E., op. cit., and Politis, A., *'Rechtsprechung:*

*Anmerkung — Pešková u. Peška'*, NJW, 37/2017, p. 2669.

14 I.e. the 24th Civil Chamber of the Landgericht Köln (Regional Court, Cologne).

15 Order of 14 November 2014, Siewert (C‑394/14, EU:C:2014:2377).

16 Judgment of 4 May 2017 (C‑315/15, EU:C:2017:342).

17 Judgment of 31 January 2013 (C‑12/11, EU:C:2013:43).

18 Judgment of 17 September 2015 (C‑257/14, EU:C:2015:618).

19 Judgment of 22 December 2008 (C‑549/07, EU:C:2008:771).

20 Judgment of 19 November 2009 (C‑402/07 and C‑432/07, EU:C:2009:716).

21 Order of 14 November 2014 (C‑394/14, EU:C:2014:2377).

22 Judgment of 4 May 2017 (C‑315/15, EU:C:2017:342, paragraphs 19 et seq.). See also Wienbracke, M., *'Verbraucherrecht: Ausgleichsleistungen bei Flugverspätung nach Kollision des Flugzeugs mit einem Vogel'*, EuZW, 2017, 571.

23 Judgment of 22 December 2008, Wallentin-HermannWallentin-Hermann (C‑549/07, EU:C:2008:771, paragraph 20).

24 Judgment of 22 December 2008, Wallentin-HermannWallentin-Hermann (C‑549/07, EU:C:2008:771, paragraph 26) (emphasis added).

25 Judgments of 22 December 2008, Wallentin-HermannWallentin-Hermann (C‑549/07, EU:C:2008:771, paragraph 26) and of 17 September 2015, van der Lansvan der Lans (C‑257/14, EU:C:2015:618, paragraph 38 et seq.). In relation to the latter case, see the judgment of the Court of Appeal (England and Wales) in Huzar v. Jet2.com Limited [2014] EWCA Civ 791 (concerning a wiring defect in the fuel valve circuit). See also van der Wijngaart, T., op. cit.

26 Judgment of 31 January 2013 (C‑12/11, EU:C:2013:43, paragraph 29).

27 See my Opinion in Joined Cases Krüsemann and OthersKrüsemann and Others (C‑195/17, C‑197/17 to C‑203/17, C‑226/17, C‑228/17, C‑254/17, C‑274/17, C‑275/17, C‑278/17 to C‑286/17 and C‑290/17 to C‑292/17, EU:C:2018:243, point 57).

28 Judgment of 17 April 2018, Krüsemann and Others (C‑195/17, C‑197/17 to C‑203/17, C‑226/17, C‑228/17, C‑254/17, C‑274/17, C‑275/17, C‑278/17 to C‑286/17 and C‑290/17 to C‑292/17, EU:C:2018:258, paragraph 34). The Court also points out therein that the circumstances referred to in this recital are not necessarily and automatically grounds of exemption from the obligation to pay compensation provided for in Article 5(1)(c) of the Flight Passenger Rights Regulation.

29 Judgment of 22 December 2008 (C‑549/07, EU:C:2008:771).

30 Judgment of 4 May 2017 (C‑315/15, EU:C:2017:342, paragraph 23 and the case-law cited).

31 Judgment of 4 May 2017 (C‑315/15, EU:C:2017:342).

32 Order of 14 November 2014 (C‑394/14, EU:C:2014:2377).

33 Opinion of Advocate General Bot in Pešková and PeškaPešková and PeškaPešková and Peška (C‑315/15, EU:C:2016:623).

34 Case 11 S 389/14.

35 It submits that, since such events are not inherent in the normal operation of a flight and are outside the control of the air carrier, they are to be classified as supervening extraneous events/circumstances.

36 Regulation of 12 February 2014 laying down requirements and administrative procedures related to aerodromes pursuant to Regulation (EC) No 216/2008 of the European Parliament and of the Council (OJ 2014 L 44, p. 1).

37 I cite here, to similar effect, a ruling of the Landgericht (Regional Court) Darmstadt (Germany) in respect of damage caused by a screw sucked into the engine (see BeckRS 2014, 23957). Moreover, it follows from the order for reference that the available technical systems for monitoring runways and for the removal of foreign objects present on them are not (yet) advanced and, accordingly, are unable to afford secure protection. A weather-resistant safety system which in future will continuously check the take-off and landing runways for foreign objects and is intended to sound an alarm in the event of danger has been under development for several years.

38 See point 20 of the present Opinion.

39 Judgment of 4 May 2017 (C‑315/15, EU:C:2017:342).

40 Order of 14 November 2014 (C‑394/14, EU:C:2014:2377).

41 BGH, NJW 2014, 861; VRR 2014, 100; NJW-RR 2015, 111.

42 cf. judgment of 4 May 2017, Pešková and PeškaPešková and PeškaPešková and Peška (C‑315/15, EU:C:2017:342, paragraph 25).

43 Judgment of 12 May 2011, Eglītis and Ratnieks (C‑294/10, EU:C:2011:303, paragraph 25).

44 cf. judgment of 28 June 1978, Simmenthal (70/77, EU:C:1978:139, paragraph 57).

45 Judgment of 29 September 2016, Essent BelgiumEssent Belgium (C‑492/14, EU:C:2016:732, paragraph 43).

46 Judgment of 12 May 2011, Eglītis and Ratnieks (C‑294/10, EU:C:2011:303, paragraph 30).

47 Judgment of 4 May 2017, Pešková and PeškaPešková and PeškaPešková and Peška (C‑315/15, EU:C:2017:342, paragraph 43) (emphasis added).

48 Judgment of 4 May 2017, Pešková and PeškaPešková and PeškaPešková and Peška (C‑315/15, EU:C:2017:342, paragraph 44).