Reports of Cases

JUDGMENT OF THE COURT (Grand Chamber)

10 July 2025 *

[Text rectified by order of 15 September 2025]

Table of Contents

I. Legal context . . . 5
A. European Union law . . . 5
1. The FEU Treaty . . . 5
2. Protocol No 26 . . . 6
3. The Charter . . . 6
4. Directive 2006/123 . . . 6
5. Directive 2008/98 . . . 10
6. Directive 2018/851 . . . 15
B. Slovenian law . . . 16
II. The main proceedings and the questions referred . . . 22
III. Consideration of the questions referred . . . 26
A. The first question . . . 26
B. The second to tenth questions . . . 32
1. Preliminary observations . . . 32
(a) Directive 2008/98 . . . 33
(b) Directive 2006/123 and Articles 49 and 56 TFEU . . . 34

* Language of the case: Slovenian.

(c) Justification of restrictions on the freedom of establishment and the freedom to provide services in the light of Directive 2006/123 and Articles 49 and 56 TFEU . . 36

(d) Compliance with the Charter and the principles of legal certainty and the protection of legitimate expectations 38

2. The conditions for establishing a monopoly over the activity of the collective fulfilment of extended producer responsibility obligations 39

(a) Restrictions on the freedom of establishment and the freedom to provide services. 39

(b) Justification for the restrictions in question 40

(1) The condition of non-discrimination 40

(2) Whether there are overriding reasons in the public interest 40

(3) The condition of proportionality 41

(i) The suitability of the restrictions for securing the attainment of the objectives pursued 42

(ii) Whether the restrictions concerned are strictly necessary and proportionate 43

(4) Compliance with Articles 16 and 17 of the Charter and with the principles of legal certainty and the protection of legitimate expectations 44

3. The measures imposed on the holder of the monopoly and on persons holding shares therein 48

(a) Restrictions on the freedom of establishment and the freedom to provide services. 49

(b) Justification for the restrictions in question 51

(1) The condition of non-discrimination 51

(2) Whether there are overriding reasons in the public interest 51

(3) The condition of proportionality 51

(i) The suitability of the restrictions for securing the attainment of the objectives pursued 51

(ii) Whether the restrictions concerned are strictly necessary and proportionate 52

(4) Compliance with Article 16 of the Charter 54

4. The measures imposed on producers wishing to gain access to the national market . . . 54

(a) Restrictions on the freedom of establishment and the freedom to provide services. 55

(b) Justification for the restrictions in question 56

(1) Whether there are overriding reasons in the public interest 56

(2) The condition of proportionality 56

(i) The suitability of the restrictions for securing the attainment of the objectives pursued 56

(ii) Whether the restrictions concerned are strictly necessary and proportionate 57

(3) Compliance with Article 16 of the Charter 57

5. The impact of the existence of a service of general economic interest on the compatibility with EU law of restrictions on freedom of establishment and freedom to provide services 59

IV. Costs 61

(Reference for a preliminary ruling – Freedom of establishment and freedom to provide services – Articles 49 and 56 TFEU – Protocol (No 26) on services of general interest, annexed to the EU and FEU Treaties – Services in the internal market – Directive 2006/123/EC – Scope – Monopolies and services of general economic interest – Requirements to be evaluated – Article 15 – Waste – Directive 2008/98/EC – Extended producer responsibility schemes – Articles 8 and 8a – Creation of a monopoly on the market for collective fulfilment of extended producer responsibility obligations – Non-profit-making single organisation – Article 106(2) TFEU – Concept of an 'undertaking' – Detailed rules for establishment and operation – Transitional arrangements – Obligation on producers subject to extended responsibility to comply with that scheme – Articles 16 and 17 of the Charter of Fundamental Rights of the European Union – Right to conduct a business and right to property – Principles of legal certainty and protection of legitimate expectations – Proportionality)

In Case C-254/23,

REQUEST for a preliminary ruling under Article 267 TFEU from the Ustavno sodišče (Constitutional Court, Slovenia), made by decision of 13 April 2023, received at the Court on 20 April 2023, in the proceedings

INTERZERO Trajnostne rešitve za svet brez odpadkov d.o.o. and Others,

Surovina, družba za predelavo odpadkov d.o.o. and Others,

intervening party:

Državni zbor Republike Slovenije,

THE COURT (Grand Chamber),

composed of K. Lenaerts, President, T. von Danwitz, Vice-President, K. Jürimäe, C. Lycourgos, M.L. Arastey Sahún, S. Rodin, A. Kumin, N. Jääskinen and M. Gavalec, Presidents of Chambers, E. Regan, I. Ziemele (Rapporteur), Z. Csehi and O. Spineanu-Matei, Judges,

Advocate General: A.M. Collins,

Registrar: M. Longar, Administrator,

having regard to the written procedure and further to the hearing on 11 June 2024,

after considering the observations submitted on behalf of:

– INTERZERO Trajnostne rešitve za svet brez odpadkov d.o.o. and Others, by A. Brezavšček, odvetnik,

– Surovina, družba za predelavo odpadkov d.o.o. and Others, by M. Senica and M. Urankar, odvetnika,

– [As rectified by order of 15 September 2025] the Slovenian Government, by A. Dežman Mušič and T. Mihelič Žitko, acting as Agents,

– the Czech Government, by L. Langrová, M. Smolek and J. Vláčil, acting as Agents,

– the Hungarian Government, by Z. Biró-Tóth, acting as Agent,

– the Netherlands Government, by E.M.M. Besselink, M.K. Bulterman and C.S. Schillemans, acting as Agents,

– the European Commission, by L. Armati, M. Kocjan, M. Mataija and D. Milanowska, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 26 September 2024,

gives the following

Judgment

1 This request for a preliminary ruling concerns the interpretation of Articles 14, 49, 56 and 106 TFEU, of Protocol (No 26) on services of general interest, annexed to the EU and FEU Treaties ('Protocol No 26'), of Directive 2006/123/EC of the European Parliament and of the Council of 12 December 2006 on services in the internal market (OJ 2006 L 376, p. 36), of Articles 8 and 8a of Directive 2008/98/EC of the European Parliament and of the Council of 19 November 2008 on waste and repealing certain Directives (OJ 2008 L 312, p. 3), as amended by Directive (EU) 2018/851 of the European Parliament and of the Council of 30 May 2018 (OJ 2018 L 150, p. 109) ('Directive 2008/98'), of Articles 16 and 17 of the Charter of Fundamental Rights of the European Union ('the Charter'), and of the principles of legal certainty and protection of legitimate expectations.

2 The request has been made in proceedings for review of the constitutionality of certain provisions of the Zakon o varstvu okolja (Law on environmental protection) of 16 March 2022 (Uradni list RS, No 44/22), in the version applicable to the main proceedings ('the ZVO-2'), establishing the extended producer responsibility scheme under Slovenian law ('the extended producer responsibility scheme at issue in the main proceedings').

I. Legal context

A. European Union law

1. The FEU Treaty

3 Article 49 TFEU provides:

'Within the framework of the provisions set out below, restrictions on the freedom of establishment of nationals of a Member State in the territory of another Member State shall be prohibited. Such prohibition shall also apply to restrictions on the setting-up of agencies, branches or subsidiaries by nationals of any Member State established in the territory of any Member State.

…'

4 Article 56 TFEU provides:

'Within the framework of the provisions set out below, restrictions on freedom to provide services within the [European] Union shall be prohibited in respect of nationals of Member States who are established in a Member State other than that of the person for whom the services are intended.

…'

5 Article 106 TFEU provides:

'1. In the case of public undertakings and undertakings to which Member States grant special or exclusive rights, Member States shall neither enact nor maintain in force any measure contrary to the rules contained in the Treaties, in particular to those rules provided for in Article 18 and Articles 101 to 109.

2. Undertakings entrusted with the operation of services of general economic interest or having the character of a revenue-producing monopoly shall be subject to the rules contained in the Treaties, in particular to the rules on competition, in so far as the application of such rules does not obstruct the performance, in law or in fact, of the particular tasks assigned to them. The development of trade must not be affected to such an extent as would be contrary to the interests of the Union.

…'

2. Protocol No 26

6 According to Article 1 of Protocol No 26:

'The shared values of the Union in respect of services of general economic interest within the meaning of Article 14 [TFEU] include in particular:

– the essential role and the wide discretion of national, regional and local authorities in providing, commissioning and organising services of general economic interest as closely as possible to the needs of the users;

– the diversity between various services of general economic interest and the differences in the needs and preferences of users that may result from different geographical, social or cultural situations;

– a high level of quality, safety and affordability, equal treatment and the promotion of universal access and of user rights.'

3. The Charter

7 Article 16 of the Charter, entitled 'Freedom to conduct a business', provides:

'The freedom to conduct a business in accordance with Union law and national laws and practices is recognised.'

8 Article 17 of the Charter, entitled 'Right to property', provides, in paragraph 1 thereof:

'Everyone has the right to own, use, dispose of and bequeath his or her lawfully acquired possessions. No one may be deprived of his or her possessions, except in the public interest and in the cases and under the conditions provided for by law, subject to fair compensation being paid in good time for their loss. The use of property may be regulated by law in so far as is necessary for the general interest.'

9 Article 52 of the Charter, entitled 'Scope and interpretation of rights and principles', provides, in paragraph 1 thereof:

'Any limitation on the exercise of the rights and freedoms recognised by this Charter must be provided for by law and respect the essence of those rights and freedoms. Subject to the principle of proportionality, limitations may be made only if they are necessary and genuinely meet objectives of general interest recognised by the Union or the need to protect the rights and freedoms of others.'

4. Directive 2006/123

10 Recitals 6, 17, 70 and 73 of Directive 2006/123 are worded as follows:

'(6) [Barriers to the freedom of establishment for providers in Member States and barriers to the free movement of services as between Member States] cannot be removed solely by relying on direct application of Articles [49 and 56 TFEU], since, on the one hand, addressing them on a case-by-case basis through infringement procedures against the Member States concerned would, especially following enlargement, be extremely complicated for national

and Community institutions, and, on the other hand, the lifting of many barriers requires prior coordination of national legal schemes, including the setting up of administrative cooperation. …

…

(17) This Directive covers only services which are performed for an economic consideration. Services of general interest are not covered by the definition in Article [57 TFEU] and therefore do not fall within the scope of this Directive. Services of general economic interest are services that are performed for an economic consideration and therefore do fall within the scope of this Directive. …

…

(70) For the purposes of this Directive, … services may be considered to be services of general economic interest only if they are provided in application of a special task in the public interest entrusted to the provider by the Member State concerned. This assignment should be made by way of one or more acts, the form of which is determined by the Member State concerned, and should specify the precise nature of the special task.

…

(73) The requirements to be examined include national rules which, on grounds other than those relating to professional qualifications, reserve access to certain activities to particular providers. These requirements also include obligations on a provider to take a specific legal form, in particular to be a legal person, to be a company with individual ownership, to be a non-profit making organisation or a company owned exclusively by natural persons, and requirements which relate to the shareholding of a company, in particular obligations to hold a minimum amount of capital for certain service activities or to have a specific qualification in order to hold share capital in or to manage certain companies. …'

11 Article 1 of that directive, headed 'Subject matter', provides:

'1. This Directive establishes general provisions facilitating the exercise of the freedom of establishment for service providers and the free movement of services, while maintaining a high quality of services.

2. This Directive does not deal with the liberalisation of services of general economic interest, reserved to public or private entities, nor with the privatisation of public entities providing services.

3. This Directive does not deal with the abolition of monopolies providing services nor with aids granted by Member States which are covered by Community rules on competition.

This Directive does not affect the freedom of Member States to define, in conformity with Community law, what they consider to be services of general economic interest, how those services should be organised and financed, in compliance with the State aid rules, and what specific obligations they should be subject to.

…'

12 Article 2 of that directive, headed ‘Scope’, provides:

‘1. This Directive shall apply to services supplied by providers established in a Member State.

2. This Directive shall not apply to the following activities:

(a) non-economic services of general interest;

…’

13 Article 4 of that directive, headed ‘Definitions’, provides:

‘For the purposes of this Directive, the following definitions shall apply:

(1) “service” means any self-employed economic activity, normally provided for remuneration, as referred to in Article [57 TFEU];

…

(7) “requirement” means any obligation, prohibition, condition or limit provided for in the laws, regulations or administrative provisions of the Member States or in consequence of case-law, administrative practice, the rules of professional bodies, or the collective rules of professional associations or other professional organisations, adopted in the exercise of their legal autonomy; …

(8) “overriding reasons relating to the public interest” means reasons recognised as such in the case-law of the Court of Justice, including the following grounds: … public health; … the protection of the environment and the urban environment …;

…’

14 Article 15 of Directive 2006/123, headed ‘Requirements to be evaluated’, provides:

‘1. Member States shall examine whether, under their legal system, any of the requirements listed in paragraph 2 are imposed and shall ensure that any such requirements are compatible with the conditions laid down in paragraph 3. Member States shall adapt their laws, regulations or administrative provisions so as to make them compatible with those conditions.

2. Member States shall examine whether their legal system makes access to a service activity or the exercise of it subject to compliance with any of the following non-discriminatory requirements:

(a) quantitative or territorial restrictions, in particular in the form of limits fixed according to population or of a minimum geographical distance between providers;

(b) an obligation on a provider to take a specific legal form;

(c) requirements which relate to the shareholding of a company;

(d) requirements, other than those concerning matters covered by Directive 2005/36/EC [of the European Parliament and of the Council of 7 September 2005 on the recognition of professional qualifications (OJ 2005 L 255, p. 22),] or provided for in other Community instruments, which reserve access to the service activity in question to particular providers by virtue of the specific nature of the activity;

…

3. Member States shall verify that the requirements referred to in paragraph 2 satisfy the following conditions:

(a) non-discrimination: requirements must be neither directly nor indirectly discriminatory according to nationality nor, with regard to companies, according to the location of the registered office;

(b) necessity: requirements must be justified by an overriding reason relating to the public interest;

(c) proportionality: requirements must be suitable for securing the attainment of the objective pursued; they must not go beyond what is necessary to attain that objective and it must not be possible to replace those requirements with other, less restrictive measures which attain the same result.

4. Paragraphs 1, 2 and 3 shall apply to legislation in the field of services of general economic interest only in so far as the application of these paragraphs does not obstruct the performance, in law or in fact, of the particular task assigned to them.

5. In the mutual evaluation report provided for in Article 39(1), Member States shall specify the following:

(a) the requirements that they intend to maintain and the reasons why they consider that those requirements comply with the conditions set out in paragraph 3;

(b) the requirements which have been abolished or made less stringent.

6. From 28 December 2006 Member States shall not introduce any new requirement of a kind listed in paragraph 2, unless that requirement satisfies the conditions laid down in paragraph 3.

…’

15 Article 16 of that directive, headed ‘Freedom to provide services’, provides, in paragraph 1 thereof:

‘Member States shall respect the right of providers to provide services in a Member State other than that in which they are established.

The Member State in which the service is provided shall ensure free access to and free exercise of a service activity within its territory.

…’

16 Article 17 of that directive, headed ‘Additional derogations from the freedom to provide services’, provides:

‘Article 16 shall not apply to:

(1) services of general economic interest which are provided in another Member State, inter alia:

…
(e) treatment of waste;

…’

5. Directive 2008/98

17 Article 1 of Directive 2008/98, headed ‘Subject matter and scope’, provides:

‘This Directive lays down measures to protect the environment and human health by preventing or reducing the generation of waste, the adverse impacts of the generation and management of waste and by reducing overall impacts of resource use and improving the efficiency of such use, which are crucial for the transition to a circular economy and for guaranteeing the Union’s long-term competitiveness.’

18 Article 3 of that directive, headed ‘Definitions’, provides:

‘For the purposes of this Directive, the following definitions shall apply:

…

9. “waste management” means the collection, transport, recovery (including sorting), and disposal of waste, including the supervision of such operations and the after-care of disposal sites, and including actions taken as a dealer or broker;

…

21. “extended producer responsibility scheme” means a set of measures taken by Member States to ensure that producers of products bear financial responsibility or financial and organisational responsibility for the management of the waste stage of a product’s life cycle.’

19 Article 8 of that directive, headed ‘Extended producer responsibility’, provides:

‘1. In order to strengthen the re-use and the prevention, recycling and other recovery of waste, Member States may take legislative or non-legislative measures to ensure that any natural or legal person who professionally develops, manufactures, processes, treats, sells or imports products (producer of the product) has extended producer responsibility.

Such measures may include an acceptance of returned products and of the waste that remains after those products have been used, as well as the subsequent management of the waste and financial responsibility for such activities. These measures may include the obligation to provide publicly available information as to the extent to which the product is re-usable and recyclable.

Where such measures include the establishment of extended producer responsibility schemes, the general minimum requirements laid down in Article 8a shall apply.

Member States may decide that producers of products that undertake financial or financial and organisational responsibilities for the management of the waste stage of a product's life cycle of their own accord should apply some or all of the general minimum requirements laid down in Article 8a.

2. Member States may take appropriate measures to encourage the design of products and components of products in order to reduce their environmental impact and the generation of waste in the course of the production and subsequent use of products, and in order to ensure that the recovery and disposal of products that have become waste take place in accordance with Articles 4 and 13.

Such measures may encourage, inter alia, the development, production and marketing of products and components of products that are suitable for multiple use, that contain recycled materials, that are technically durable and easily reparable and that are, after having become waste, suitable for preparing for re-use and recycling in order to facilitate proper implementation of the waste hierarchy. The measures shall take into account the impact of products throughout their life cycle, the waste hierarchy and, where appropriate, the potential for multiple recycling.

3. When applying extended producer responsibility, Member States shall take into account the technical feasibility and economic viability and the overall environmental, human health and social impacts, respecting the need to ensure the proper functioning of the internal market.

4. The extended producer responsibility shall be applied without prejudice to the responsibility for waste management as provided for in Article 15(1) and without prejudice to existing waste stream specific and product specific legislation.

5. The [European] Commission shall organise an exchange of information between Member States and the actors involved in extended producer responsibility schemes on the practical implementation of the general minimum requirements laid down in Article 8a. This includes, inter alia, exchange of information on best practices to ensure adequate governance, cross-border cooperation concerning extended producer responsibility schemes and a smooth functioning of the internal market, on the organisational features and the monitoring of organisations implementing extended producer responsibility obligations on behalf of producers of products, on the modulation of financial contributions, on the selection of waste management operators and on the prevention of littering. The Commission shall publish the results of the exchange of information and may provide guidelines on these and other relevant aspects.

The Commission shall publish guidelines, in consultation with Member States, on cross-border cooperation concerning extended producer responsibility schemes and on the modulation of financial contributions referred to in point (b) of Article 8a(4).

Where necessary to avoid distortion of the internal market, the Commission may adopt implementing acts in order to lay down criteria with a view to the uniform application of point (b) of Article 8a(4), but excluding any precise determination of the level of the contributions. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 39(2).'

20 Article 8a of the same Directive, headed ‘General minimum requirements for extended producer responsibility schemes’, provides:

‘1. Where extended producer responsibility schemes are established in accordance with Article 8(1), including pursuant to other legislative acts of the Union, Member States shall:

(a) define in a clear way the roles and responsibilities of all relevant actors involved, including producers of products placing products on the market of the Member State, organisations implementing extended producer responsibility obligations on their behalf, private or public waste operators, local authorities and, where appropriate, re-use and preparing for re-use operators and social economy enterprises;

(b) in line with the waste hierarchy, set waste management targets, aiming to attain at least the quantitative targets relevant for the extended producer responsibility scheme as laid down in this Directive, [European Parliament and Council Directive 94/62/EC of 20 December 1994 on packaging and packaging waste (OJ 1994 L 365, p. 10)], Directive 2000/53/EC [of the European Parliament and of the Council of 18 September 2000 on end-of life vehicles (OJ 2000 L 269, p. 34)], Directive 2006/66/EC [of the European Parliament and of the Council of 6 September 2006 on batteries and accumulators and waste batteries and accumulators and repealing Directive 91/157/EEC (OJ 2006 L 266, p. 1)] and Directive 2012/19/EU of the European Parliament and of the Council [of 4 July 2012 on waste electrical and electronic equipment (WEEE) (OJ 2012 L 197, p. 38)], and set other quantitative targets and/or qualitative objectives that are considered relevant for the extended producer responsibility scheme;

(c) ensure that a reporting system is in place to gather data on the products placed on the market of the Member State by the producers of products subject to extended producer responsibility and data on the collection and treatment of waste resulting from those products specifying, where appropriate, the waste material flows, as well as other data relevant for the purposes of point (b);

(d) ensure equal treatment of producers of products regardless of their origin or size, without placing a disproportionate regulatory burden on producers, including small and medium-sized enterprises, of small quantities of products.

2. Member States shall take the necessary measures to ensure that the waste holders targeted by the extended producer responsibility schemes established in accordance with Article 8(1), are informed about waste prevention measures, centres for re-use and preparing for re-use, take-back and collection systems, and the prevention of littering. Member States shall also take measures to create incentives for the waste holders to assume their responsibility to deliver their waste into the separate collection systems in place, notably, where appropriate, through economic incentives or regulations.

3. Member States shall take the necessary measures to ensure that any producer of products or organisation implementing extended producer responsibility obligations on behalf of producers of products:

(a) has a clearly defined geographical, product and material coverage without limiting those areas to those where the collection and management of waste are the most profitable;

(b) provides an appropriate availability of waste collection systems within the areas referred to in point (a);

(c) has the necessary financial means or financial and organisational means to meet its extended producer responsibility obligations;

(d) puts in place an adequate self-control mechanism, supported, where relevant, by regular independent audits, to appraise:
   (i) its financial management, including compliance with the requirements laid down in points (a) and (b) of paragraph 4;
   (ii) the quality of data collected and reported in accordance with point (c) of paragraph 1 of this Article and with the requirements of Regulation (EC) No 1013/2006 [of the European Parliament and of the Council of 14 June 2006 on shipments of waste (OJ 2006 L 190, p. 1)];

(e) makes publicly available information about the attainment of the waste management targets referred to in point (b) of paragraph 1, and, in the case of collective fulfilment of extended producer responsibility obligations, also information about:
   (i) its ownership and membership;
   (ii) the financial contributions paid by producers of products per unit sold or per tonne of product placed on the market; and
   (iii) the selection procedure for waste management operators.

4. Member States shall take the necessary measures to ensure that the financial contributions paid by the producer of the product to comply with its extended producer responsibility obligations:

(a) cover the following costs for the products that the producer puts on the market in the Member State concerned:

   – costs of separate collection of waste and its subsequent transport and treatment, including treatment necessary to meet the Union waste management targets, and costs necessary to meet other targets and objectives as referred to in point (b) of paragraph 1, taking into account the revenues from re-use, from sales of secondary raw material from its products and from unclaimed deposit fees,

   – costs of providing adequate information to waste holders in accordance with paragraph 2,

   – costs of data gathering and reporting in accordance with point (c) of paragraph 1.

   This point shall not apply to extended producer responsibility schemes established pursuant to Directive [2000/53], [2006/66] or [2012/19];

(b) in the case of collective fulfilment of extended producer responsibility obligations, are modulated, where possible, for individual products or groups of similar products, notably by taking into account their durability, reparability, re-usability and recyclability and the presence of hazardous substances, thereby taking a life-cycle approach and aligned with the requirements set by relevant Union law, and where available, based on harmonised criteria in order to ensure a smooth functioning of the internal market; and

(c) do not exceed the costs that are necessary to provide waste management services in a cost-efficient way. Such costs shall be established in a transparent way between the actors concerned.

Where justified by the need to ensure proper waste management and the economic viability of the extended producer responsibility scheme, Member States may depart from the division of financial responsibility as laid down in point (a), provided that:

(i) in the case of extended producer responsibility schemes established to attain waste management targets and objectives established under legislative acts of the Union, the producers of products bear at least 80% of the necessary costs;

(ii) in the case of extended producer responsibility schemes established on or after 4 July 2018 to attain waste management targets and objectives solely established in Member State legislation, the producers of products bear at least 80% of the necessary costs;

(iii) in the case of extended producer responsibility schemes established before 4 July 2018 to attain waste management targets and objectives solely established in Member State legislation, the producers of products bear at least 50% of the necessary costs,

and provided that the remaining costs are borne by original waste producers or distributors.

This derogation may not be used to lower the proportion of costs borne by producers of products under extended producer responsibility schemes established before 4 July 2018.

5. Member States shall establish an adequate monitoring and enforcement framework with a view to ensuring that producers of products and organisations implementing extended producer responsibility obligations on their behalf implement their extended producer responsibility obligations, including in the case of distance sales, that the financial means are properly used and that all actors involved in the implementation of the extended producer responsibility schemes report reliable data.

Where, in the territory of a Member State, multiple organisations implement extended producer responsibility obligations on behalf of producers of products, the Member State concerned shall appoint at least one body independent of private interests or entrust a public authority to oversee the implementation of extended producer responsibility obligations.

Each Member State shall allow the producers of products established in another Member State and placing products on its territory to appoint a legal or natural person established on its territory as an authorised representative for the purposes of fulfilling the obligations of a producer related to extended producer responsibility schemes on its territory.

For the purposes of monitoring and verifying compliance with the obligations of the producer of the product in relation to extended producer responsibility schemes, Member States may lay down requirements, such as registration, information and reporting requirements, to be met by a legal or natural person to be appointed as an authorised representative on their territory.

6. Member States shall ensure a regular dialogue between relevant stakeholders involved in the implementation of extended producer responsibility schemes, including producers and distributors, private or public waste operators, local authorities, civil society organisations and,

where applicable, social economy actors, re-use and repair networks and preparing for re-use operators.

7. Member States shall take measures to ensure that extended producer responsibility schemes that have been established before 4 July 2018, comply with this Article by 5 January 2023.

8. The provision of information to the public under this Article shall be without prejudice to preserving the confidentiality of commercially sensitive information in conformity with the relevant Union and national law.'

6. Directive 2018/851

21 Recitals 14, 21, 22 and 26 of Directive 2018/851 read as follows:

'(14) A definition of extended producer responsibility scheme should be introduced to clarify that it means a set of measures taken by Member States requiring producers of products to bear financial or financial and organisational responsibility for the management of the waste stage of a product's life cycle including separate collection, sorting and treatment operations. That obligation can also include organisational responsibility and a responsibility to contribute to waste prevention and to the reusability and recyclability of products. Producers of products can fulfil the obligations of the extended producer responsibility scheme individually or collectively.

…

(21) Extended producer responsibility schemes form an essential part of efficient waste management. However, their effectiveness and performance differ significantly between Member States. It is necessary therefore to set minimum operating requirements for such extended producer responsibility schemes, and to clarify that those requirements also apply to extended producer responsibility schemes established pursuant to other legislative acts of the Union, … in addition to the requirements already laid down therein, unless explicitly stated otherwise. …

(22) The general minimum requirements should reduce costs and boost performance, as well as ensure a level playing field, including for small and medium-sized enterprises and e-commerce enterprises, and avoid obstacles to the smooth functioning of the internal market. They should also contribute to the incorporation of end-of-life costs into product prices and provide incentives for producers, when designing their products, to take better into account recyclability, reusability, reparability and the presence of hazardous substances. Overall, those requirements should improve the governance and transparency of extended producer responsibility schemes and reduce the possibility of conflicts of interest emerging between organisations implementing extended producer responsibility obligations on behalf of producers of products and waste operators that those organisations contract. The requirements should apply to both new and existing extended producer responsibility schemes. A transitional period is however necessary for existing extended producer responsibility schemes to adapt their structures and procedures to the new requirements.

…

(26) Producers of products should cover the costs necessary to meet the waste management targets and other targets and objectives, including on waste prevention, defined for the relevant extended producer responsibility scheme. Under strict conditions, those costs can be shared with the original waste producers or distributors where justified by the need to ensure proper waste management and the economic viability of the extended producer responsibility scheme.'

B. Slovenian law

22 Article 34 of the ZVO-2, headed 'Extended producer responsibility', provides:

'(1) A producer of products subject to extended producer responsibility … must respect all the prohibitions, requirements and other rules of conduct in order to ensure that the waste resulting from the use of those products is managed … in the manner prescribed.

…

(4) A producer established in another country that sells at a distance in Slovenia, directly to consumers or other end-users, products covered by [extended producer responsibility], must appoint an authorised representative who is responsible for complying with its obligations.

…

(6) A producer established in another Member State of the [Union] or in a country of the European Economic Area … that markets products covered by [extended producer responsibility] in the territory of Slovenia may assume the obligations of a producer established in Slovenia by appointing an authorised representative responsible for carrying out its obligations in that territory. In the case referred to in the previous sentence, those obligations shall be assumed by the authorised representative.

…'

23 Article 35 of the ZVO-2, headed 'Producer obligations', provides:

'(1) The producer shall ensure:

1. the collection of product waste throughout the territory of Slovenia, with the exception of collection from the original waste producers, where this is carried out as a mandatory municipal public service for the collection of municipal waste;

2. the treatment of all product waste collected;

3. the attainment of environmental objectives by ensuring the management of the waste from the products;

4. the provision of information to the public and waste holders about the method and importance of preventing product waste, reusing and returning used products covered by extended producer responsibility, the separate collection of product waste and litter prevention, as well as the environmentally efficient management of product waste;

5. the provision of information to those responsible for the treatment of waste with respect to products covered by [extended producer responsibility] and the methods of treating waste from those products, where this is required; and

6. the maintenance of a register of [extended producer responsibility] products placed on the market in Slovenia, the maintenance of a register of the waste from the products that has been collected and treated, and the transmission to the Ministry of data from those registers.

(2) The producer shall fulfil the obligations referred to in paragraph 1 of this Article together with other producers of the same type of products subject to [extended producer responsibility], by participating in the joint implementation of activities and measures to fulfil the obligations relating to the waste from those products …

(3) Notwithstanding the previous paragraph, a producer may individually fulfil the obligations referred to in paragraph 1 of this Article if it places on the market in Slovenia products covered by [extended producer responsibility] which are not intended for domestic use …

…’

24 Article 37 of the ZVO-2, headed ‘Collective fulfilment of obligations’, provides:

‘(1) The producers referred to in Article 35(1) of this Law that do not individually fulfil their obligations under Article 35(3) must ensure the collective fulfilment of those obligations. The collective fulfilment of extended producer responsibility obligations in respect of products of the same type shall be ensured by an organisation responsible for the collective fulfilment of [extended producer responsibility] obligations for waste from such products … That organisation shall ensure the collective fulfilment of the obligations of the producers that establish the organisation as well as of the producers that join the organisation when it is already established. Those producers are placed on an equal footing as regards the fulfilment of extended producer responsibility obligations, irrespective of whether they established the organisation or joined it when it was already established.

(2) A single organisation shall ensure the collective fulfilment of extended producer responsibility obligations in respect of products of the same type.

(3) The producers referred to in paragraph 1 of this article shall conclude a written contract with that organisation, by which they entrust that organisation to fulfil their obligations under Article 35(1) of this Law.

…’

25 Article 38 of the ZVO-2, headed ‘Organisation’, states:

(1) An organisation is a legal person established in Slovenia for the purpose of carrying out, for producers of the same type of product that are subject to extended producer responsibility and that are required to fulfil collectively the relevant obligations in accordance with paragraph 1 of the preceding article, the collective fulfilment of those obligations in the context of a non-profit-making activity; the revenues from the collective fulfilment of those obligations under this Law shall not exceed the costs actually incurred.

…

(3) The organisation may not engage in any activity which is not related to the objective referred to in paragraph 1 of this article.

(4) The organisation shall be established and owned by producers of certain products of the same type subject to [extended producer responsibility] that, together, place on the market at least 51% of the total quantity of those products, the shareholding of each producer in the organisation not exceeding 25%. The rules for proving compliance with the condition referred to in the preceding sentence shall be laid down by the Government in the provisions referred to in Article 34(8) of this Law.

(5) The organisation and producers that have a shareholding in that organisation cannot be persons who collect or treat waste from products to which the collective fulfilment of the obligations under that law apply, unless the provisions referred to in Article 34(8) of this Law provide that a person who prepares waste from products covered by extended producer responsibility with a view to their re-use, and who brings them back on the market a second time or who recycles that waste into a recovered substance or object which is a product covered by extended producer responsibility but which has a use different from the original product, must be regarded as a producer.

(6) The organisation concerned and producers that have a shareholding in it may not:

1. have direct or indirect capital links with the person carrying on the collection or treatment of waste resulting from products to which the collective fulfilment of obligations applies in that organisation or have management or control rights in that legal person;

2. have capital links or family ties with a person that holds or controls voting rights in the governing body or supervisory body or who represents the person referred to in the previous point.

(7) The following shall be regarded as a family relationship within the meaning of point 2 of paragraph 6 of this Article: a blood relationship by descent or indirect relationship up to and including the fourth degree, links arising from legally recognised forms of partnership and marriage up to and including the second degree, even if the partnership or marriage has been dissolved or if the holder of the shareholding is a guardian or has a curatorship vis-à-vis a person who holds or controls voting rights in the management or supervisory body or who represents the person referred to in point 1 of paragraph 6.

(8) Control of the voting rights referred to in point 2 of paragraph 6 of this article shall mean the rights, contracts or other means which, individually or jointly, and having regard to the relevant factual or legal circumstances, enable the shareholder to exercise decisive influence over a person who holds or controls voting rights in the management or supervisory body or who represents the person referred to in point 6 of paragraph 1.

(9) The restrictions referred to in paragraphs 5 and 6 of this Article shall also apply to a member of the management body of the organisation concerned, its supervisory body or representative body.

(10) An organisation must have a supervisory body for the [extended producer responsibility] scheme, composed of three representatives of the producers that hold shares in the organisation, three representatives of the producers that joined the already established organisation and a representative of the Ministry for the Environment. The representatives of the producers that set up an organisation and the representatives of the producers that join an already established organisation shall be placed on an equal footing and shall have the same decision-making rights. The procedure for appointing the individual representatives of the producers referred to in the previous sentence to the body referred to in this paragraph and the duration of their term of office for the [extended producer responsibility] scheme shall be determined by the Government in the provisions referred to in Article 38(8) of this Law.

(11) The body referred to in the preceding paragraph shall:

1. be regularly informed of the collective fulfilment of the obligations by the organisation concerned,

2. confirm the amount of the financial contribution to be paid by the producer per sales unit or per tonne of a product covered by [extended producer responsibility] placed on the market in Slovenia,

3. confirm the environmental objectives envisaged and achieved by that organisation in the management of product waste,

4. adopt a general act setting out the standards for the management of waste from products covered by [extended producer responsibility] with which persons collecting or treating waste from such products on behalf of that organisation must comply, in addition to the requirements laid down in the provisions referred to in Article 24(6) of this Law and in the provisions referred to in Article 34(8) of this Law,

5. consult or arrange for consultation of the documentation referred to in Article 37(6)(4) of this Law and, in accordance with Article 40(11) of this Law, inspect the waste collection or treatment sites of persons who on behalf of the organisation collect or treat waste from products covered by [extended producer responsibility], and assess their findings in accordance with the criteria laid down in the provisions referred to in Article 38(8) of this Law, and

6. confirm the content of the invitation to tender referred to in Article 40(6) of this Law and, on the basis of the criteria defined by the Government in the provisions referred to in Article 34(8) of this Law and the results of the consultation of the documents and inspections of the waste collection or treatment sites referred to in the preceding paragraph, shall determine, in a non-discriminatory manner, the persons who will carry out, for the organisation concerned, pursuant to Article 37(1) of this Law, the collection and preparation of waste from products with a view to their final recovery or disposal in the coming calendar year.

…’

26 Article 39 of the ZVO-2, headed ‘Obligations of the organisation’, provides:

‘(1) The organisation shall ensure the collective fulfilment of obligations in accordance with Article 35(1) and (2) of this Law in a cost-effective manner. The organisation shall ensure the

fulfilment of the obligations referred to in the previous sentence with regard to the management of all product waste generated across the territory of the Republic of Slovenia in a given period. The organisation shall make sure that the collection and treatment of product waste is carried out in such a way as to avoid congestion during the year.

…

(3) The organisation shall have a plan for the collective fulfilment of obligations … in which it shall define the activities and measures intended to fulfil the obligations referred to in paragraph 1 of this Article.

…’

27 Article 41 of the ZVO-2, headed ‘Authorisation for collective fulfilment of obligations’, provides:

‘(1) The organisation concerned must be authorised to carry out the collective fulfilment of obligations.

…

(5) Authorisation for the collective fulfilment of obligations shall be issued for an indefinite period from the date it comes into effect. …

…’

28 Article 275 of the ZVO-2, headed ‘Adaptation of the fulfilment of [extended producer responsibility] obligations by the current producers [concerned]’, provides:

‘(1) Existing producers of products which are subject to [extended producer responsibility] at the time of entry into force of this Law and that are required to fulfil their obligations in that regard under the system of collective fulfilment of obligations referred to in Article 37 of this Law shall set up an organisation under Article 38 of this Law, and that organisation shall submit a full application for authorisation for the collective fulfilment of obligations under Article 41 of this Law by 31 July 2022. Existing producers of products that are subject to [extended producer responsibility] at the time of entry into force of this Law and that are not founders of an organisation under Article 38 of this Law shall be required to conclude, by 31 December 2022 at the latest, a contract with an organisation which has obtained authorisation for the collective fulfilment of obligations under Article 41 of this Law.

…

(3) An existing producer of products subject to [extended producer responsibility] at the time of entry into force of this Law that does not comply with the provisions of the preceding paragraphs of this article shall be liable to the following penalties:

1. in respect of a legal person, a fine of EUR 75 000 to EUR 250 000;

2. in respect of a sole trader or a natural person carrying on an activity on his or her own account, a fine of EUR 45 000 to EUR 135 000.

…

(5) Where an organisation pursuant to Article 38(1) of this Law notifies the Ministry in writing that, on the basis of the final authorisation referred to in Article 41(3) of this Law, it has started to collectively fulfil the packaging waste management obligations under this Law, the Ministry shall issue a declaratory decision on the expiry of the authorisation for the collective fulfilment of packaging waste management obligations, by which the environmental permits for the collective fulfilment of the obligations relating to the management of packaging waste issued on the basis of the Uredba o ravnanju z embalažo in odpadno embalažo (Regulation on the management of packaging and packaging waste) of 27 July 2006 (Uradni list RS, No 84/06), or of the Uredba o embalaži in odpadni embalaži (Regulation on packaging and packaging waste) of 8 April 2021 (Uradni list RS, No 54/21), shall cease to be valid.

(6) The decisions approving joint plans adopted on the basis of the Uredba o odpadni električni in elektronski opremi (Regulation on waste electrical and electronic equipment) of 23 July 2015 (Uradni list RS, No 55/15), the Uredba o ravnanju z baterijami in akumulatorji ter odpadnimi baterijami in akumulatorji (Regulation on the management of batteries and accumulators and waste batteries and accumulators) of 14 January 2010 (Uradni list RS, No 3/10), the Uredba o odpadnih nagrobnih svečah (Regulation on waste cemetery candles) of 18 April 2019 (Uradni list RS, No 25/19), the Uredba o ravnanju z odpadnimi zdravili (Regulation on the management of medicinal products) of 30 October 2008 (Uradni list RS, No 105/08), the Uredba o ravnanju z odpadnimi fitofarmacevtskimi sredstvi, ki vsebujejo nevarne snovi (Regulation on the management of waste from plant protection products containing dangerous substances) of 9 November 2006 (Uradni list RS, No 119/06), the Uredba o izrabljenih vozilih (Regulation on end-of-life vehicles) of 28 April 2011 (Uradni list RS, No 32/11) and the Uredba o ravnanju z izrabljenimi gumami (Regulation on the management of used tyres) of 30 July 2009 (Uradni list RS, No 63/09) shall cease to have effect on the basis of the declaratory decisions to terminate the validity of the joint plans taken by the Ministry where the organisation referred to in Article 38(1) of this Law notifies the Ministry in writing that, on the basis of the final authorisation referred to in Article 41(3) of this Law, it has begun to carry out the collective fulfilment of the obligations to manage those products under this Law.

(7) Decisions on the approval of individual plans adopted on the basis of the Regulation on the management of packaging and packaging waste …, or the Regulation on packaging and packaging waste …, the Regulation on waste electrical and electronic equipment …, the Regulation on the management of batteries and accumulators and waste batteries and accumulators …, the Regulation on waste cemetery candles …, the Regulation on the management of medicinal products …, the Regulation on the management of waste from plant protection products containing dangerous substances …, the Regulation on end-of-life vehicles … and the Regulation on the management of used tyres …, shall cease to be valid as from 1 January 2023 and the Ministry shall take a declaratory decision on this matter by 5 January 2023 at the latest.

(8) In the cases referred to in paragraphs 5 and 6 of this Article, contracts concluded for the fulfilment of the obligations of producers of products relating to the management of product waste, in the context of which authorisation to implement obligations was granted to a company on the basis of point 2 of Article 20(10) of the Zakon o varstvu okolja (Law on environmental protection) (Uradni list RS, No 39/06; 'the ZVO-1'), shall cease to have effect from the date of adoption of the declaratory decision.

(9) In the cases referred to in paragraphs 5 to 7 of this article, the contracts concluded between, on the one hand, a company authorised to fulfil obligations on the basis of point 2 of Article 20(10) of the ZVO-1 or a producer which has individually fulfilled obligations on the basis of point 1 of Article 20(10) of the ZVO-1, and, on the other hand, entities treating product waste on the basis of those contracts, shall cease to have effect from the date of adoption of the declaratory decision.'

II. The main proceedings and the questions referred

29 On 29 March 2022, the Slovenian legislature carried out a legislative reform by adopting the ZVO-2, which replaced the ZVO-1 and several sectoral regulations applicable to certain categories of products with the extended producer responsibility scheme at issue in the main proceedings, with effect from 13 April 2022.

30 As is apparent from the documents before the Court, the ZVO-1 provided for a scheme under which a producer subject to extended producer responsibility obligations could fulfil those obligations, either individually or collectively, through a producer association or a commercial company authorised for that purpose ('a ZVO-1 operator'). The detailed rules for implementing that scheme were set out in sectoral regulations for the various categories of products covered by that extended responsibility and could also depend on the business model of each ZVO-1 operator.

31 As regards household product packaging and cemetery candles, significant shortcomings were identified in relation to the implementation of that scheme. The Slovenian legislature thus first intervened in 2018 to ensure the take-back and treatment of accumulated packaging waste and cemetery candles. Before the adoption of the ZVO-2, it intervened a second time by amending, with effect from 1 January 2021, the same scheme, in particular by removing the exclusion from its application that had applied to producers placing less than 15 tonnes of packaging on the market per annum.

32 Hearing two actions brought by INTERZERO Trajnostne rešitve za svet brez odpadkov d.o.o. and other companies and natural persons ('Interzero and Others'), and by Surovina, družba za predelavo odpadkov d.o.o. and other companies, respectively, the Ustavno sodišče (Constitutional Court, Slovenia), which is the referring court, initiated proceedings for a review of the constitutionality of the extended producer responsibility scheme at issue in the main proceedings. The companies that are applicants in the main proceedings are commercial companies established in Slovenia. They are producers of products subject to the extended producer responsibility scheme at issue in the main proceedings, ZVO-1 operators and/or operators carrying out the activity of waste management.

33 By orders of 19 May and 14 December 2022, the referring court suspended the application of some of the provisions of the ZVO-2 which had been contested by the applicants in the main proceedings, with the result that the provisions of the ZVO-1 and the relevant sectoral regulations referred to in paragraph 30 of the present judgment will continue to apply until the final decision is taken in the main proceedings.

34 The referring court notes that the ZVO-2 fundamentally altered the detailed rules for fulfilling extended producer responsibility obligations, provided for until now by the ZVO-1, and is uncertain as to the conformity with EU law of a number of legislative measures thus adopted.

35 In the first place, the referring court observes that the collective fulfilment of extended producer responsibility obligations for each category of products covered can no longer be carried out by one or more economic operators competing on the same market, since a single organisation must be created, for each of those product categories, by the producers that place on the market at least 51% of the total quantity of the product concerned ('the single organisation'). In addition, that activity must be carried out on a non-profit-making basis, meaning that it ceases to be a regulated market-oriented activity.

36 The referring court states, first, that it requires an interpretation of Article 106 TFEU to enable it to rule on the argument put forward by the applicants in the main proceedings that the grant to a single organisation of an exclusive right to carry on that activity is contrary to that article, read in conjunction with Article 102 TFEU.

37 Second, the referring court questions whether such a monopolistic situation is compatible with Articles 8 and 8a of Directive 2008/98, Directive 2006/123, Articles 49, 56 and 106 TFEU and Articles 16 and 17 of the Charter. As regards the justification for a restriction under Articles 49 and 56 TFEU and Article 15(3) of Directive 2006/123, the referring court enquires, in particular, as to whether the extended producer responsibility scheme at issue in the main proceedings is capable of ensuring in a consistent manner the attainment of the objectives of protection of the environment and human health, as provided for by Directives 2008/98 and 2018/851, and whether that scheme is limited to what is strictly necessary.

38 In the second place, the referring court notes that the extended producer responsibility scheme at issue in the main proceedings provides for the expiry by operation of law of the contracts concluded between ZVO-1 operators, on the one hand, and producers of products subject to an extended responsibility scheme and waste management service providers, on the other hand. That expiry is not subject to a specific deadline, since it is to take place only once the single organisation has begun its activity and the Ministry responsible for the environment has adopted a declaratory decision to that effect. In addition, no measure of compensation for the ZVO-1 operators concerned is provided for.

39 Being of the view that the exclusion of current service providers entails a restriction on the freedom to conduct a business, as set out in Article 16 of the Charter and Articles 49 and 56 TFEU, the referring court expresses doubts as to whether the transitional arrangements provided for by the extended producer responsibility scheme at issue in the main proceedings comply with EU law. In particular, the interpretation of the principles of legal certainty and the protection of legitimate expectations is required in so far as the applicants in the main proceedings submit that the amendment made by that scheme undermined 'in an arbitrary and unexpected manner' their legitimate expectation that they would be able to carry on the collective fulfilment of their obligations in that regard. That court also raises the question of whether the rule that the single organisation must use the profits solely to carry on the activity and to implement measures for the collective fulfilment of extended producer responsibility obligations complies with the right to property guaranteed by Article 17 of the Charter.

40 In that regard, the referring court submits that existing extended producer responsibility schemes had to be adapted to the requirements of Directive 2018/851 before 5 January 2023. However, since the Slovenian legislature had already made amendments in that area with effect from 1 January 2021, the parties concerned could not have anticipated further amendments, which, moreover, were as significant as those introduced by the extended producer responsibility scheme at issue in the main proceedings.

41 In the third place, the referring court notes that the extended producer responsibility scheme at issue in the main proceedings imposes a number of restrictions on capital links, family ties and authorised activities with regard to the various actors involved in the collective fulfilment of extended producer responsibility obligations. In particular, the single organisation may be established only by producers, and only producers that have established such an organisation may hold shares in it. In addition, the producers that hold shares in that organisation may not carry out the collection and treatment of the waste in question, while producers that assume extended producer responsibility obligations and at the same time carry out the collection and treatment of waste cannot hold such shares.

42 In that regard, the referring court is uncertain whether such requirements, which may be understood as seeking to guard against the risk that non-producers may influence the management of the single organisation and to reduce conflicts of interest between that organisation and the operators carrying out the activity of waste management, respectively, with a view to protecting the environment and competition, are consistent with Article 15 of Directive 2006/123, Articles 49 and 56 TFEU and Article 16 of the Charter.

43 In the fourth place, the referring court explains that the producers covered by the extended producer responsibility scheme at issue in the main proceedings are obliged, on pain of a fine, to contract with the single organisation for the purposes of the collective fulfilment of their obligations in that regard. It thus asks whether such a restriction on the freedom of contract and the freedom to conduct a business is compatible with Article 16 of the Charter and with Articles 49 and 56 TFEU, particularly since the applicants in the main proceedings submit that such an obligation to contract places certain producers at a disadvantage compared with producers that already have a shareholding in the single organisation.

44 In those circumstances, the Ustavno sodišče (Constitutional Court) decided to stay the proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:

‘(1) Must a legal person that has the exclusive right to carry out the collective fulfilment of extended producer responsibility obligations in respect of products of the same type within the territory of the Republic of Slovenia be regarded as an undertaking entrusted with the operation of a service of general economic interest, within the meaning of Article 106(2) [TFEU] (read in the light of Article 14 TFEU, [Protocol No 26] and Articles 8 and 8a of [Directive 2008/98], where that activity includes:

– the conclusion of contracts with the producers of certain products pursuant to which those producers entrust that legal person with the task of ensuring on their behalf the proper management of the waste resulting from those products;

– the organisation of a system for the collection and treatment of waste (the conclusion of contracts with commercial companies to carry out, on the [single] organisation’s behalf, the collection and proper treatment of all waste resulting from products to which extended producer responsibility applies); and

– the keeping of a register of the products to which extended producer responsibility applies and which are placed on the market in the Republic of Slovenia, and the keeping of a register of the collected and treated waste resulting from the products to which extended producer responsibility applies, and the transmission of that data to the Ministry,

and where that legal person is obliged, in order to carry out that activity, to conclude contracts both with producers having extended producer responsibility and with the commercial companies that will carry out the collection and treatment of waste?

(2) Must Articles 16 and 17 of the [Charter], Articles 49, 56 and 106 TFEU, [Directive 2006/123] and Articles 8 and 8a of [Directive 2008/98] be interpreted as precluding legislation pursuant to which the collective fulfilment of extended producer responsibility obligations in respect of products of the same type may be carried out by only one legal person in the territory of the Member State and only on a non-profit-making basis, meaning that income must not exceed actual expenditure incurred in the collective fulfilment of the extended producer responsibility obligations and that the legal person in question must use any profits solely for carrying out its activities and implementing measures for the collective fulfilment of the extended producer responsibility obligations?

(3) In the event that question 2 is answered in the negative, must Article 16 of the [Charter], Articles 49, 56 and 106 TFEU, the principles of legal certainty and of the protection of legitimate interests and Articles 8 and 8a of [Directive 2008/98] be interpreted as precluding legislation by means of which a Member State changes the activity of the collective fulfilment of extended producer responsibility obligations in respect of products of the same type, transforming it from a regulated, market-oriented profit-making activity carried on by a number of economic operators into an activity that only one organisation is authorised to carry on and which must be carried out on a non-profit-making basis, as described in question 2?

(4) Must the provisions of EU law referred to in question 3 be interpreted as precluding national legislation which, by reason of the entry into force of a new legislative framework for the collective fulfilment of extended producer responsibility obligations, results, by operation of law (*ex lege*), in interference in individual relationships such as to terminate all contracts concluded between the economic operators that carried on the collective fulfilment of extended producer responsibility obligations in accordance with the previous regime and the producers having extended producer responsibility obligations, and between the economic operators that carried on the collective fulfilment of extended producer responsibility obligations in accordance with the previous regime and the economic operators that collected and treated waste resulting from products in respect of which the collective fulfilment of extended producer responsibility obligations must be carried out?

(5) In circumstances where new legislation as described in questions 3 and 4 is adopted, must the principles of legal certainty and of the protection of legitimate expectations be interpreted as requiring the legislature to establish a transition period and/or to introduce a system of compensation? If so, what criteria determine the reasonableness of the transition period or the system of compensation?

(6) Must Article 16 of the [Charter], Articles 49, 56 and 106 TFEU, [Directive 2006/123] and Articles 8 and 8a of [Directive 2008/98] be interpreted as precluding legislation pursuant to which producers that have extended producer responsibility obligations and place on the market 51% of the [total quantity of] products of the same type to which the extended producer responsibility obligation applies are required to establish a legal person entrusted with the collective fulfilment of [those] obligations, and pursuant to which producers of products of the same type must, in the event that authorisation is withdrawn [from that legal

person], establish such a legal person anew, or must the abovementioned provisions of EU law be interpreted as precluding rules pursuant to which only producers may hold a share in such legal person?

(7) Must Article 16 of the [Charter], Articles 49, 56 and 106 TFEU, [Directive 2006/123] and Articles 8 and 8a of [Directive 2008/98] be interpreted as precluding legislation pursuant to which producers that hold a share in the legal person that carries out the collective fulfilment of extended producer responsibility obligations may not be persons that carry on the collection or treatment of waste resulting from the products to which the collective fulfilment of extended producer responsibility obligations applies in that legal person?

(8) Must Article 16 of the [Charter], Articles 49, 56 and 106 TFEU, [Directive 2006/123] and Articles 8 and 8a of [Directive 2008/98] be interpreted as precluding legislation pursuant to which a producer that holds a share in the legal person that carries out the collective fulfilment of extended producer responsibility obligations and the legal person that carries on the collective fulfilment of extended producer responsibility obligations may not:

– have direct or indirect capital links with the person carrying on the collection or treatment of waste resulting from products to which the collective fulfilment of obligations applies in the legal person that carries on the collective fulfilment of extended producer responsibility obligations or have management or control rights in that legal person;

– have capital links or family ties with a person that holds or controls voting rights in the governing body or supervisory body of the legal person referred to in the previous indent or with that legal person's representative?

(9) Must Article 16 of the [Charter], Articles 49, 56 and 106 TFEU, [Directive 2006/123] and Articles 8 and 8a of [Directive 2008/98] be interpreted as precluding legislation pursuant to which the restrictions mentioned in questions 7 and 8 apply equally to members of the governing body of the legal person that carries on the collective fulfilment of extended producer responsibility obligations, to members of the supervisory body of that legal person and to that legal person's representative?

(10) Must Article 16 of the [Charter] and Articles 49 and 56 TFEU be interpreted as precluding legislation pursuant to which producers that have extended producer responsibility obligations and place on the market products intended for household use must without exception conclude a contract under which they entrust the legal person that has the authorisation to carry on the collective fulfilment of extended producer responsibility obligations with the task of fulfilling their obligations [in that regard]?'

III. Consideration of the questions referred

A. The first question

45 By its first question, the referring court asks, in essence, whether Article 106(2) TFEU must be interpreted as meaning that a legal person that, first, enjoys the exclusive right to exercise, in accordance with Articles 8 and 8a of Directive 2008/98, an activity consisting of the fulfilment, for a given category of products and throughout the territory of a Member State, of extended producer responsibility obligations on behalf of the producers concerned, and that, second, is

required to carry out that activity on a non-profit-making basis, must be regarded as an undertaking entrusted with the operation of a service of general economic interest, within the meaning of Article 106(2) of that directive.

46 In order to answer that question, it is necessary to ascertain, first, whether a legal person acting in such circumstances may be regarded as an 'undertaking' within the meaning of that provision and, second, whether the activity which that legal person is responsible for carrying out by virtue of such an exclusive right may be classified as a service of general economic interest within the meaning of that provision.

47 Thus, as regards, in the first place, the concept of 'undertaking' within the meaning of Article 106(2) TFEU, it should be borne in mind that, according to settled case-law in the field of EU competition law, that concept covers any entity engaged in an economic activity, irrespective of its legal status and the way in which it is financed (see, to that effect, judgments of 11 June 2020, *Commission and Slovak Republic* v *Dôvera zdravotná poist'ovňa*, C-262/18 P and C-271/18 P, EU:C:2020:450, paragraph 28 and the case-law cited, and of 18 January 2024, *Lietuvos notarų rūmai and Others*, C-128/21, EU:C:2024:49, paragraph 55).

48 In accordance with settled case-law, any activity consisting in offering goods and services on a given market, that is to say, services normally provided for remuneration, is an economic activity. In that regard, the essential characteristic of remuneration lies in the fact that it constitutes consideration for the service in question (see, to that effect, judgments of 3 October 2002, *Danner*, C-136/00, EU:C:2002:558, paragraph 26 and the case-law cited; of 6 November 2018, *Scuola Elementare Maria Montessori* v *Commission*, *Commission* v *Scuola Elementare Maria Montessori* and *Commission* v *Ferracci*, C-622/16 P to C-624/16 P, EU:C:2018:873, paragraph 104 and the case-law cited; and of 11 June 2020, *Commission and Slovak Republic* v *Dôvera zdravotná poist'ovňa*, C-262/18 P and C-271/18 P, EU:C:2020:450, paragraph 29 and the case-law cited).

49 By contrast, the rules of the Treaties may not apply to an activity which, by its nature, its aim and the rules to which it is subject, does not belong to the sphere of economic activity, or which is connected with the exercise of the powers of a public authority (see, to that effect, judgments of 19 February 2002, *Wouters and Others*, C-309/99, EU:C:2002:98, paragraph 57, and of 28 February 2013, *Ordem dos Técnicos Oficiais de Contas*, C-1/12, EU:C:2013:127, paragraph 40).

50 In the present case, it is apparent from the order for reference that the extended producer responsibility scheme at issue in the main proceedings provides for the grant, to the single organisation, of the exclusive right to carry out, on a non-profit-making basis and throughout the territory of Slovenia, the activity of the collective fulfilment of extended producer responsibility obligations for a given category of products covered by that extended responsibility. That activity consists, essentially, in the establishment of a system for the collection and treatment of the waste from those products, in return for the payment of fees by the producers affiliated to that organisation.

51 As regards the rules to which that activity is subject, it is covered by the extended producer responsibility scheme referred to in Articles 8 and 8a of Directive 2008/98. However, the EU legislature merely laid down minimum requirements as regards extended producer responsibility, without specifying how the producers concerned are required to fulfil the obligations to which they are subject under a responsibility scheme established in accordance with those provisions. Nevertheless, that legislature did state, in recital 14 of Directive 2018/851, that those producers may, in principle, fulfil those obligations either individually or collectively.

Therefore, recourse, by such producers, to an organisation responsible for the collective fulfilment of those obligations in accordance with those provisions is one of the means by which they may comply with the obligations to which they are subject under an extended producer responsibility scheme.

52 Furthermore, as is apparent from the documents before the Court, it follows from Article 39(1) and (3) of the ZVO-2 that the single organisation is required to carry out the collective fulfilment of extended producer responsibility obligations in a cost-effective manner, since the fees collected in return for its services must cover all the costs of that activity. In addition, any profits made by that organisation in respect of the fees paid to it by the producers concerned are to be reinvested in that activity and can thus strengthen the financial capacity of that organisation for the purpose of implementing the system for the collection and treatment of waste from products covered by extended producer responsibility.

53 Notwithstanding the significant influence which, as was confirmed by the Slovenian Government at the hearing, the public authorities are called on to exercise, in general, over the activity of the single organisation, in particular as regards setting the amount of the fees, that organisation has autonomy in the way in which it provides its services in the field of the collective fulfilment of extended producer responsibility obligations.

54 In those circumstances, the activity referred to in paragraph 50 of the present judgment cannot be regarded as connected with the exercise of public powers in relation to waste management.

55 In addition, as regards the question whether the activity carried out by the single organisation may be classified as outside the sphere of economic activity, it must be borne in mind, first, that the mere fact that an entity does not seek to make a profit is not sufficient to support the conclusion that that entity does not carry out an economic activity (see, to that effect, judgment of 26 March 2009, *SELEX Sistemi Integrati* v *Commission*, C-113/07 P, EU:C:2009:191, paragraph 116). Accordingly, the mere fact that the national legislation provides that the profits made by an entity from its activity must be used to pursue certain public interest objectives is not sufficient to alter the nature of that activity or to deprive it of its economic character (see, to that effect, judgments of 24 March 1994, *Schindler*, C-275/92, EU:C:1994:119, paragraph 35, and of 23 February 2016, *Commission* v *Hungary*, C-179/14, EU:C:2016:108, paragraph 157).

56 Second, the economic nature of an activity is not called into question by the mere fact that a Member State chooses, as in the present case, to remove that activity from the field of competition for reasons of public interest by creating a legal monopoly for an entity entrusted with exclusive rights (see, to that effect, judgments of 30 April 1974, *Sacchi*, 155/73, EU:C:1974:40, paragraph 14, and of 3 October 1985, *CBEM*, 311/84, EU:C:1985:394, paragraph 16). It follows from Article 106(1) and (2) TFEU that, irrespective of whether or not that entity seeks to make a profit, the manner in which that monopoly is organised or exercised is liable to infringe the rules of the Treaties, in particular those relating to the freedoms of movement and the competition rules (see, to that effect, judgment of 18 June 1991, *ERT*, C-260/89, EU:C:1991:254, paragraph 11).

57 It is true that the situation is different where the entity concerned contributes to the management of the public social security service and fulfils an exclusively social function, its activity thus being based on the principle of solidarity (see, to that effect, judgments of 17 February 1993, *Poucet and*

Pistre, C-159/91 and C-160/91, EU:C:1993:63, paragraph 18, and of 22 October 2015, *EasyPay and Finance Engineering*, C-185/14, EU:C:2015:716, paragraph 38). However, an activity such as that referred to in paragraph 50 of this judgment does not come within such a category.

58 In the light of the foregoing, a legal person such as the single organisation may therefore be regarded as carrying out an economic activity within the meaning of the case-law cited in paragraphs 47 and 48 of the present judgment and, accordingly, as constituting an 'undertaking' within the meaning of Article 106(2) TFEU.

59 As regards, in the second place, the question whether the collective fulfilment of extended producer responsibility obligations may be classified as a service of general economic interest, it is important to bear in mind that Article 106(2) TFEU, which seeks to reconcile the Member States' interest in using certain undertakings as an instrument of economic or social policy with the European Union's interest in ensuring compliance with the rules on competition and the preservation of the unity of the internal market, must be interpreted in the light of the clarifications provided in Protocol No 26, since Article 1 thereof states, inter alia, that the Member States enjoy 'discretion' in providing, commissioning and organising services of general economic interest that are tailored as closely as possible to the needs of users (see, to that effect, judgment of 24 November 2020, *Viasat Broadcasting UK*, C-445/19, EU:C:2020:952, paragraphs 30 and 31 and the case-law cited).

60 Accordingly, Member States are entitled, while complying with EU law, to define the scope and the organisation of their services of general economic interest, and may take into account, in particular, objectives pertaining to their national policy. The broad discretion enjoyed by Member States in that regard may be called into question only in the event of a manifest error (see, to that effect, judgments of 20 April 2010, *Federutility and Others*, C-265/08, EU:C:2010:205, paragraph 29; of 15 May 2019, *Achema and Others*, C-706/17, EU:C:2019:407, paragraph 104; and of 8 June 2023, *Prestige and Limousine*, C-50/21, EU:C:2023:448, paragraph 76). Indeed, the Member States' power to define a service of general economic interest cannot be exercised arbitrarily, with the sole aim of exempting a particular sector of activity from the application of the rules of the Treaties.

61 That discretion was reaffirmed by the EU legislature in the second subparagraph of Article 1(3) of Directive 2006/123, which states that that directive does not affect the freedom of Member States to define, in conformity with EU law, what they consider to be services of general economic interest, how those services should be organised and financed in compliance with the State aid rules, and to what specific obligations they should be subject (see, to that effect, judgment of 7 November 2018, *Commission* v *Hungary*, C-171/17, EU:C:2018:881, paragraph 50).

62 It is settled case-law that a service may be of general economic interest where that interest displays specific characteristics compared to that of other economic activities (judgments of 7 November 2018, *Commission* v *Hungary*, C-171/17, EU:C:2018:881, paragraph 51 and the case-law cited, and of 8 June 2023, *Prestige and Limousine*, C-50/21, EU:C:2023:448, paragraph 77).

63 Furthermore, as is also apparent from recital 70 of Directive 2006/123, in order to be classified as a service of general economic interest, a service must be provided in pursuance of a particular public service mission entrusted to the provider by the Member State concerned (judgments of 7 November 2018, *Commission* v *Hungary*, C-171/17, EU:C:2018:881, paragraph 52, and of 8 June 2023, *Prestige and Limousine*, C-50/21, EU:C:2023:448, paragraph 78).

64 It is therefore important that the recipient undertaking has actually been entrusted with the discharge of public service obligations and that those obligations are clearly defined in national law, which presupposes the existence of one or more acts of public authority defining with sufficient precision at least the nature, duration and scope of the public service obligations incumbent on the undertaking entrusted with the discharge of those obligations (see, to that effect, judgments of 20 December 2017, *Comunidad Autónoma del País Vasco and Others* v *Commission*, C-66/16 P to C-69/16 P, EU:C:2017:999, paragraph 73, and of 8 June 2023, *Prestige and Limousine*, C-50/21, EU:C:2023:448, paragraph 79).

65 Thus, as regards, first, the question whether the activity of the collective fulfilment of extended producer responsibility obligations is capable of being of general economic interest, it is true that, according to the case-law, the mere organisational management of economic transactions on behalf of third parties does not, in principle, exhibit special characteristics as compared with those of other economic activities (see, to that effect, judgments of 21 March 1974, *BRT and Société belge des auteurs, compositeurs et éditeurs*, 127/73, EU:C:1974:25, paragraph 23; of 10 December 1991, *Merci convenzionali porto di Genova*, C-179/90, EU:C:1991:464, paragraph 27; and of 28 February 2013, *Ordem dos Técnicos Oficiais de Contas*, C-1/12, EU:C:2013:127, paragraph 105).

66 However, the Court has held that, in view of their importance for the protection of the environment and human health, certain aspects of waste management, such as its collection and treatment, may form the subject of a service of general economic interest, particularly where the service is designed to deal with an environmental problem (see, to that effect, judgments of 10 November 1998, *BFI Holding*, C-360/96, EU:C:1998:525, paragraph 52, and of 23 May 2000, *Sydhavnens Sten & Grus*, C-209/98, EU:C:2000:279, paragraph 75).

67 In order to ascertain whether similar reasoning may apply to the activity of the collective fulfilment of extended producer responsibility obligations, it should be borne in mind that the first and third subparagraphs of Article 8(1) of Directive 2008/98 provide that Member States may, in order to strengthen the re-use and the prevention, recycling and other recovery of waste, subject producers of products to extended producer responsibility schemes, in which case such schemes must comply with the general minimum requirements laid down in Article 8a of that directive, as introduced by Directive 2018/851.

68 It follows from the definition of 'extended producer responsibility scheme' in Article 3(21) of Directive 2008/98, read in conjunction with recital 21 of Directive 2018/851, that extended producer responsibility schemes are intended to provide a financial and, where appropriate, organisational framework for the management of waste from certain categories of products and thus constitute an essential part of the efficient management of that waste. Indeed, such schemes contribute directly to the attainment of the objective of Directive 2008/98, which is, inter alia, to minimise the negative effects of waste management on the environment and human health (see, to that effect, judgments of 14 October 2020, *Sappi Austria Produktion and Wasserverband 'Region Gratkorn-Gratwein'*, C-629/19, EU:C:2020:824, paragraph 59, and of 11 November 2021, *Regione Veneto (Shipment of mixed municipal waste)*, C-315/20, EU:C:2021:912, paragraph 19).

69 As stated in paragraph 51 of the present judgment, recourse by producers subject to extended producer responsibility obligations to an organisation responsible for the collective fulfilment of those obligations, in accordance with Articles 8 and 8a of Directive 2008/98, is one of the means by which those producers may comply with the obligations to which they are thus subject. Moreover, according to the explanations provided by the referring court, it was in order to

ensure efficient waste management and, therefore, to protect, inter alia, the environment, that the Slovenian legislature adopted the ZVO-2, providing that the collective fulfilment of extended producer responsibility obligations for a type of products could be carried out only by a single organisation. It follows that, in so far as it contributes to ensuring the effective application of extended producer responsibility schemes, that activity may be regarded as being of a general economic interest exhibiting special characteristics as compared with that of other economic activities and, consequently, is capable of forming the subject of a service of general economic interest.

70 Second, as regards the question whether, in carrying out the collective fulfilment of extended producer responsibility obligations, the single organisation provides its services in the context of a particular public service task entrusted to it, it is apparent from the case-law that the act of public authority by which the recipient undertaking is entrusted with a service of general economic interest may be not only legislative or regulatory but also administrative, taking, inter alia, the form of a concession governed by public law granted, where appropriate, in order to give effect to the legal obligations imposed on that undertaking (see, to that effect, judgment of 23 October 1997, *Commission* v *France*, C-159/94, EU:C:1997:501, paragraphs 65 and 66).

71 In the present case, it is apparent from the order for reference that, in accordance with Article 41 of the ZVO-2, the single organisation is entrusted with the collective fulfilment of extended producer responsibility obligations under an authorisation issued specifically for that purpose by the competent ministry. Article 41(5) of the ZVO-2 provides that that authorisation is to be issued for an indefinite period and contains details of the content and scope of the single organisation's obligations in the context of that activity.

72 It thus appears that that legislation satisfies the requirement that the services concerned must be provided in pursuance of a particular public service task entrusted to the provider by the Member State concerned, by virtue of one or more acts meeting the conditions referred to in paragraph 64 of the present judgment. It is, however, for the national court to carry out the necessary verifications in that regard.

73 In the light of all the foregoing considerations, the answer to the first question referred for a preliminary ruling is that Article 106(2) TFEU must be interpreted as meaning that a legal person that, first, has the exclusive right to exercise, in accordance with Articles 8 and 8a of Directive 2008/98, an activity consisting of the fulfilment, for a given category of products and throughout the territory of a Member State, of extended producer responsibility obligations on behalf of the producers concerned, and that, second, is required to carry out that activity on a non-profit-making basis, must be regarded as an undertaking entrusted with the operation of a service of general economic interest, within the meaning of that Article 106(2), provided that that legal person has actually been entrusted with the discharge of public service obligations and that the nature, duration and scope of those obligations are clearly defined in national law.

B. The second to tenth questions

74 By its second to tenth questions, which it is appropriate to examine together, the referring court asks, in essence, whether Articles 8 and 8a of Directive 2008/98, Directive 2006/123, Articles 49, 56 and 106 TFEU, Articles 16 and 17 of the Charter and the principles of legal certainty and the protection of legitimate expectations must be interpreted as precluding national legislation which:

– introduces a monopoly situation through the creation of an organisation entrusted with the collective fulfilment of extended producer responsibility obligations and having the exclusive right to carry out that activity in respect of a given category of products, while providing both for the revocation by operation of law of the authorisations which have enabled economic operators to carry out that activity to date and for the termination by operation of law of all the contracts concluded by those operators in the exercise of that activity;

– requires that organisation to carry on that activity on a non-profit-making basis;

– provides that producers subject to extended producer responsibility obligations that place on the market at least 51% of the total quantity of products of the same category to which that extended responsibility obligation applies must establish such an organisation and hold shares in it;

– provides that shareholders in that organisation must be producers on the market concerned;

– prohibits those producers from carrying out the activity of waste collection and treatment and prohibits capital or family ties between, on the one hand, that organisation, the members of its management body and producers that have a shareholding in it and, on the other hand, the persons who collect and treat waste and persons who have voting rights in the governing body or supervisory body of that organisation;

– makes it compulsory for those producers of products to fulfil their extended producer responsibility obligations collectively and requires them to contract with an organisation that has an exclusive right to carry out that activity.

1. Preliminary observations

75 In its questions referred for a preliminary ruling, the referring court questions the conditions for establishing a monopoly over the activity of fulfilling extended producer responsibility obligations provided for in the extended producer responsibility scheme at issue in the main proceedings as well as certain measures imposed, in that context, on the single organisation as holder of that monopoly and on producers subject to extended producer responsibility obligations under Slovenian law. In order to answer those questions and having regard to all of the provisions of EU law to which that court refers, it is necessary to clarify at the outset to what extent those provisions may affect the examination of those questions.

(a) Directive 2008/98

76 Under the first and third subparagraphs of Article 8(1) of Directive 2008/98, Member States may, in order to strengthen the re-use, prevention, recycling and other recovery of waste, subject producers of products to extended producer responsibility schemes, in which case such schemes must comply with the general minimum requirements laid down in Article 8a of that directive.

77 As noted in paragraph 51 of the present judgment, producers of products subject to those schemes established in accordance with Articles 8 and 8a of Directive 2008/98 may, in principle, fulfil their obligations in that regard either individually, or collectively using an organisation entrusted with implementing those obligations on their behalf.

78 In that regard, Directive 2008/98 not only leaves Member States free to choose whether certain categories of products should be covered by extended producer responsibility schemes, but also allows them, subject to compliance with the minimum requirements laid down in Article 8a of that directive, a margin of discretion in the organisation of those schemes and, in particular, the arrangements for the collective fulfilment of those extended producer responsibility obligations.

79 First, the second subparagraph of Article 8a(5) of Directive 2008/98 merely provides that, where more than one organisation implements extended producer responsibility obligations on behalf of producers of products, the Member States concerned are to appoint at least one body independent of private interests or entrust a public authority to oversee the implementation of those extended producer responsibility obligations.

80 Second, it follows from Article 8a(4)(c) of Directive 2008/98 that Member States are to take the necessary measures to ensure that the financial contributions paid by the producer of the product concerned in order to comply with its extended responsibility obligations do not exceed the costs that are necessary to provide waste management services in a cost-efficient way. Contrary to what the Slovenian Government has argued, such a rule relating to the pricing of waste management services does not allow conclusions to be drawn as regards the possibility for an organisation entrusted with the collective fulfilment of extended producer responsibility obligations to be run for profit.

81 That said, it is apparent from recitals 22 and 26 of Directive 2018/851 that the extended producer responsibility schemes established in accordance with Articles 8 and 8a of Directive 2008/98 are intended, inter alia, to ensure that the costs necessary to achieve the waste management and prevention objectives defined for the scheme in question are efficiently passed on to the producers, and to boost the environmental performance of waste management systems. It follows that, when establishing extended producer responsibility schemes, the Member States must take those objectives into consideration, while also taking into account the general objective of Directive 2008/98, which is to minimise the negative effects of the generation and management of waste on the environment and human health (see, to that effect, judgment of 4 July 2019, *Tronex*, C-624/17, EU:C:2019:564, paragraph 18), and Article 191(2) TFEU, which provides that EU policy on the environment is to aim at a high level of protection and is to be based, inter alia, on the precautionary principle and on the principles that preventive action should be taken and that the polluter should pay.

82 In addition, Article 8(3) of Directive 2008/98 states that Member States, when exercising the discretion referred to in paragraph 78 of the present judgment, are required, when applying extended producer responsibility, to ensure the proper functioning of the internal market.

Accordingly, subject to the derogations provided for by EU law in the field of services of general economic interest, any national legislation establishing an extended producer responsibility scheme in accordance with Articles 8 and 8a of that directive must comply with the EU rules that seek to ensure the proper functioning of the internal market, namely, in particular, Articles 49 and 56 TFEU, which enshrine the freedom of establishment and the freedom to provide services, respectively, and the acts adopted in accordance with Articles 53 and 62 TFEU, such as Directive 2006/123.

83 In that respect, it should be noted that Article 8(3) of Directive 2008/98 concerns the application of the rules of the internal market of the European Union not only in the relationships between the producers of products themselves and between those producers and the organisations wishing to carry out the collective fulfilment of extended producer responsibility obligations, but also in the relationships between the organisations wishing to carry out that activity.

(b) Directive 2006/123 and Articles 49 and 56 TFEU

84 It follows from recital 6 of Directive 2006/123 that barriers to the freedom of establishment and the freedom to provide services cannot be removed solely by relying on direct application of Articles 49 and 56 TFEU, owing, inter alia, to the extreme complexity of addressing barriers to those freedoms on a case-by-case basis (see, to that effect, judgments of 16 June 2015, *Rina Services and Others*, C-593/13, EU:C:2015:399, paragraph 38, and of 7 November 2024, *Centro di Assistenza Doganale Mellano*, C-503/23, EU:C:2024:933, paragraph 46).

85 Indeed, if a national measure were to be examined simultaneously in the light of the provisions of Directive 2006/123 and those of the FEU Treaty, that would be tantamount to introducing case-by-case examination, as a matter of primary law, and would thereby undermine the targeted harmonisation effected by that directive (see, to that effect, judgments of 30 January 2018, *X and Visser*, C-360/15 and C-31/16, EU:C:2018:44, paragraph 96, and of 7 November 2024, *Centro di Assistenza Doganale Mellano*, C-503/23, EU:C:2024:933, paragraph 47 and the case-law cited).

86 It follows that it is only where a restriction of the freedom of establishment or of the freedom to provide services falls outside the scope of Chapters III and IV of Directive 2006/123, in particular Articles 15 and 16 thereof, that it must be examined in the light of Articles 49 and 56 TFEU (see, to that effect, judgments of 26 June 2019, *Commission* v *Greece*, C-729/17, EU:C:2019:534, paragraph 54 and the case-law cited, and of 7 November 2024, *Centro di Assistenza Doganale Mellano*, C-503/23, EU:C:2024:933, paragraph 48).

87 Therefore, in order to answer the second to tenth questions, it is necessary to interpret the provisions of Directive 2006/123 in so far as they are applicable to the main proceedings.

88 As provided in Article 1(1) of Directive 2006/123, that directive establishes general provisions facilitating the exercise of the freedom of establishment for service providers and the free movement of services. Pursuant to Article 2(1) of Directive 2006/123, that directive applies to services supplied by providers established in a Member State, the concept of ‘service’ covering, in accordance with Article 4(1) of that directive, any self-employed economic activity, normally provided for remuneration, as referred to in Article 57 TFEU.

89 In the present case, the extended producer responsibility scheme at issue in the main proceedings concerns various aspects of the provision of services for the collective fulfilment of extended producer responsibility obligations and certain requirements to which producers covered by that scheme and that carry out their economic activities on Slovenian territory are subject, with the result that Directive 2006/123 is, in principle, applicable in the main proceedings.

90 Nevertheless, as stated in the answer given to the first question referred for a preliminary ruling, the activity consisting of the fulfilment, for a given category of products and throughout the territory of a Member State, of extended producer responsibility obligations on behalf of the producers concerned and which must be carried out on a non-profit-making basis under the law of that Member State may be classified as a service of general economic interest. In addition, the extended producer responsibility scheme at issue in the main proceedings establishes a monopoly over the exercise of that activity. In that regard it should be borne in mind that, under Article 1(2) and the first subparagraph of Article 1(3) of Directive 2006/123, that directive does not deal with the liberalisation of services of general economic interest, reserved to public or private entities, or with the abolition of monopolies providing services.

91 Those provisions of Directive 2006/123 exclude from the scope of that directive situations in which the provision of a service is exempt from competition because national legislation has conferred a monopoly on a given operator for the provision of certain services, and in which their application would have the effect of calling into question the existence of that monopoly (see, to that effect, judgment of 17 October 2024, *FA.RO. di YK & C.*, C-16/23, EU:C:2024:886, paragraph 55). However, the Court has interpreted those provisions as relating only to services of general economic interest and service monopolies which existed at the date on which the directive entered into force (see, to that effect, judgment of 7 November 2018, *Commission* v *Hungary*, C-171/17, EU:C:2018:881, paragraphs 42 and 43).

92 It follows that the extended producer responsibility scheme at issue in the main proceedings is not covered by the exclusion from the scope of Directive 2006/123 provided for in Article 1(2) and the first subparagraph of Article 1(3) thereof.

93 It is true that the second subparagraph of Article 1(3) of Directive 2006/123 provides that that directive does not affect the freedom of Member States to define, in conformity with EU law, what they consider to be services of general economic interest, how those services should be organised and financed, in compliance with State aid rules, and to what specific obligations they should be subject. However, the fact remains that, subject to that reservation, in the light of Article 2(1) and (2)(a) of that directive, read in conjunction with recital 17 thereof, the rules laid down by that directive are applicable, in principle, to services of general economic interest, only non-economic services of general interest being excluded from their scope (see, to that effect, judgments of 23 December 2015, *Hiebler*, C-293/14, EU:C:2015:843, paragraphs 43 and 44; of 11 April 2019, *Repsol Butano and DISA Gas*, C-473/17 and C-546/17, EU:C:2019:308, paragraph 43; and of 17 October 2024, *FA.RO. di YK & C.*, C-16/23, EU:C:2024:886, paragraph 61).

94 As regards the freedom of establishment of service providers, the first sentence of Article 15(1) of Directive 2006/123 provides that the Member States are required to examine whether, under their legal system, one or more of the requirements listed in Article 15(2) of that directive are imposed and, if so, to ensure that such requirements are compatible with the conditions of non-discrimination, necessity and proportionality laid down in Article 15(3) of that directive. Pursuant to the second sentence of Article 15(1) of that directive, the Member States must adapt

their laws, regulations or administrative provisions so as to make them compatible with those conditions (see, to that effect, judgment of 30 January 2018, *X and Visser*, C-360/15 and C-31/16, EU:C:2018:44, paragraph 129).

95 While Article 15(4) of Directive 2006/123 states that paragraphs 1 to 3 of that article are to apply to legislation on services of general economic interest only in so far as the application of those paragraphs does not obstruct the performance, in law or in fact, of the particular task assigned to the provider concerned, the Court has held that that provision does not automatically exclude services of general economic interest from the scope of that article. As follows from the very wording of Article 15(4) of Directive 2006/123, in so far as the conditions of non-discrimination, necessity, and proportionality, referred to in paragraph 3 of that article, do not obstruct the particular task assigned by the competent authority to a service of general economic interest, those conditions must be complied with (see, to that effect, judgments of 7 November 2018, *Commission* v *Hungary*, C-171/17, EU:C:2018:881, paragraph 62, and of 11 April 2019, *Repsol Butano and DISA Gas*, C-473/17 and C-546/17, EU:C:2019:308, paragraph 47).

96 It follows that only restrictions on the freedom of establishment not covered by the requirements listed in Article 15(2) of Directive 2006/123 must be examined in the light of Article 49 TFEU. As regards those requirements, it should be noted that, according to settled case-law, the provisions of Chapter III of Directive 2006/123, on freedom of establishment of providers, which includes Article 15 of that directive, also apply to situations in which all the relevant elements are confined to a single Member State (see, to that effect, judgments of 30 January 2018, *X and Visser*, C-360/15 and C-31/16, EU:C:2018:44, paragraph 110, and of 17 October 2024, *FA.RO. di YK & C.*, C-16/23, EU:C:2024:886, paragraph 47 and the case-law cited).

97 As regards, however, the freedom to provide services referred to in Article 16 of Directive 2006/123, Article 17(1)(e) of that directive expressly provides that Article 16 does not apply to services of general economic interest which are provided in another Member State, inter alia, to treatment of waste. So far as concerns that fundamental freedom, the extended producer responsibility scheme at issue in the main proceedings can therefore be examined only in the light of Article 56 TFEU.

(c) Justification of restrictions on the freedom of establishment and the freedom to provide services in the light of Directive 2006/123 and Articles 49 and 56 TFEU

98 As regards restrictions on freedom of establishment coming within the scope of the requirements listed in Article 15(2) of Directive 2006/123, it follows from Article 15(5) and (6) of that directive that Member States may maintain or, if necessary, introduce requirements of the type referred to in Article 15(2), on condition that those requirements satisfy the conditions referred to in Article 15(3) (judgments of 16 June 2015, *Rina Services and Others*, C-593/13, EU:C:2015:399, paragraph 33, and of 29 July 2019, *Commission* v *Austria (Civil engineers, patent agents and veterinary surgeons)*, C-209/18, EU:C:2019:632, paragraph 80).

99 Under the cumulative conditions laid down in Article 15(3) of Directive 2006/123, the requirements concerned, first, must be neither directly nor indirectly discriminatory according to the nationality of the persons concerned or, in the case of companies, the location of their registered office. Second, those requirements must be justified by an overriding reason relating to the public interest. Third, they must be proportionate, that is to say, they must be suitable for securing, in a consistent and systematic manner, the attainment of the objective pursued without going beyond what is necessary to attain it, it being understood that there must be no other, less

restrictive measures which attain the same result (see, to that effect, judgments of 7 November 2018, *Commission* v *Hungary*, C-171/17, EU:C:2018:881, paragraph 80, and of 7 November 2024, *Centro di Assistenza Doganale Mellano*, C-503/23, EU:C:2024:933, paragraphs 79 and 84).

100 As regards restrictions on the freedom of establishment and the freedom to provide services guaranteed in Articles 49 and 56 TFEU, it is settled case-law that such restrictions are permissible only if they are justified by an overriding reason in the public interest and they observe the principle of proportionality, which means that they must be suitable for securing, in a consistent and systematic manner, the attainment of the objective pursued and do not go beyond what is necessary in order to attain it (see, to that effect, judgments of 18 June 2019, *Austria* v *Germany*, C-591/17, EU:C:2019:504, paragraph 139 and the case-law cited; of 7 September 2022, *Cilevičs and Others*, C-391/20, EU:C:2022:638, paragraph 65 and the case-law cited; and of 8 June 2023, *Prestige and Limousine*, C-50/21, EU:C:2023:448, paragraph 64).

101 In order to determine whether a restriction satisfies the condition of proportionality, it is for the Member State wishing to rely on an objective capable of justifying a restriction of a fundamental freedom or right to provide the national court with all the evidence of such a kind as to enable it to be satisfied that the measure concerned does indeed meet the requirements deriving from the principle of proportionality (see, to that effect, judgment of 28 February 2018, *Sporting Odds*, C-3/17, EU:C:2018:130, paragraph 62 and the case-law cited). The reasons which may be invoked by that Member State by way of justification must be accompanied by an analysis of the appropriateness and necessity of that measure for attaining that objective and specific evidence substantiating its arguments (see, to that effect, judgment of 19 January 2023, *CIHEF and Others*, C-147/21, EU:C:2023:31, paragraph 53 and the case-law cited).

102 However, it cannot be inferred from the Court's case-law that a Member State is deprived of the possibility of establishing that a restrictive measure satisfies those requirements solely on the ground that it is not able to produce studies serving as the basis for the adoption of the legislation concerned (see, to that effect, judgment of 28 February 2018, *Sporting Odds*, C-3/17, EU:C:2018:130, paragraph 63 and the case-law cited).

103 The national court will need to examine objectively, with the help of statistical data or by other means, whether it may reasonably be concluded from the information submitted by the authorities of the Member State concerned that the means chosen are such as to enable the objectives pursued to be achieved and whether it would be possible to attain those objectives by less restrictive measures (see, to that effect, judgment of 17 October 2024, *FA.RO. di YK & C.*, C-16/23, EU:C:2024:886, paragraph 92 and the case-law cited).

104 In that regard, with regard to the burden imposed on economic operators by the national measures concerned, the Member States are required, even where they have broad discretion, to base their choices on objective criteria and to examine, in the context of the assessment of the burdens associated with various possible measures, whether the objectives pursued by those national measures are such as to justify even substantial negative economic consequences for the economic operators concerned (see, by analogy, judgments of 16 December 2008, *Arcelor Atlantique et Lorraine and Others*, C-127/07, EU:C:2008:728, paragraph 59 and the case-law cited, and of 8 December 2020, *Poland* v *Parliament and Council*, C-626/18, EU:C:2020:1000, paragraph 98).

(d) Compliance with the Charter and the principles of legal certainty and the protection of legitimate expectations

105 It is settled case-law that where a Member State argues that a measure of which it is the author and which restricts a fundamental freedom guaranteed by the FEU Treaty is justified by an overriding reason in the public interest recognised by EU law, such a measure must be regarded as implementing EU law within the meaning of Article 51(1) of the Charter, such that it must comply with the fundamental rights enshrined in the Charter (see, to that effect, judgment of 18 June 2020 *Commission* v *Hungary (Transparency of associations)*, C-78/18, EU:C:2020:476, paragraph 101 and the case-law cited). The same applies where a Member State relies, pursuant to Article 15(3)(b) of Directive 2006/123, on an overriding reason in the public interest in order to justify a requirement coming within the scope of Article 15(2) (see, by analogy, judgment of 6 October 2020, *Commission* v *Hungary (Higher education)*, C-66/18, EU:C:2020:792, paragraph 214).

106 It follows that, where national legislation constitutes a restriction on the freedom of establishment and/or the freedom to provide services, the compatibility of that legislation with EU law and, therefore, its justification, must be examined not only in the light of the exceptions provided for in Directive 2006/123 and the Court's case-law, but also in the light of the rights and freedoms guaranteed by the Charter (see, to that effect, judgments of 21 May 2019, *Commission* v *Hungary (Usufruct over agricultural land)*, C-235/17, EU:C:2019:432, paragraph 66 and the case-law cited, and of 6 October 2021, *ECOTEX BULGARIA*, C-544/19, EU:C:2021:803, paragraph 89).

107 The requirement that a measure must comply with the rights and freedoms guaranteed by the Charter entails ascertaining whether the national provisions concerned impose limitations on those rights and freedoms and, if they do, whether those limitations are justified in the light of the requirements set out in Article 52(1) of the Charter (see, to that effect, judgment of 18 June 2020, *Commission* v *Hungary (Transparency of associations)*, C-78/18, EU:C:2020:476, paragraph 103).

108 In that regard, it must be borne in mind that neither the freedom to conduct a business enshrined in Article 16 of the Charter nor the right to property guaranteed by Article 17 of the Charter are absolute (see, to that effect, judgment of 30 April 2024, *Trade Express-L and DEVNIA TSIMENT*, C-395/22 and C-428/22, EU:C:2024:374, paragraph 78 and the case-law cited), it being possible to impose limitations on their exercise, in accordance with Article 52(1) of the Charter, as long as those limitations are provided for by law, respect the essence of those rights and freedoms and, subject to the principle of proportionality, are necessary and genuinely meet objectives of general interest recognised by the European Union or the need to protect the rights and freedoms of others.

109 In that respect, it must be pointed out that objectives of general interest, such as the protection of the environment and the protection of public health, may not be pursued by a national measure without having regard to the fact that they must be reconciled with the fundamental rights and principles affected by that measure, as set out in the Treaties and the Charter, by properly balancing those objectives of general interest against the rights and principles at issue, in order to ensure that the disadvantages caused by that measure are not disproportionate to the objectives pursued. Thus, the question whether a limitation on the rights guaranteed in Articles 16 and 17 of the Charter may be justified must be assessed by measuring the seriousness of the interference which such a limitation entails and by verifying that the importance of the objectives of general

interest pursued by that limitation is proportionate to that seriousness (see, to that effect, judgment of 5 December 2023, *Nordic Info*, C-128/22, EU:C:2023:951, paragraph 93 and the case-law cited).

110 Moreover, when a Member State relies on overriding reasons in the public interest in order to justify rules liable to obstruct the exercise of the freedom of establishment and the freedom to provide services, such justification must be interpreted also in the light of the general principles of EU law, which include the principles of legal certainty and of the protection of legitimate expectations (see, to that effect, judgments of 20 December 2017, *Global Starnet*, C-322/16, EU:C:2017:985, paragraph 44 and the case-law cited, and of 22 September 2022, *Admiral Gaming Network and Others*, C-475/20 to C-482/20, EU:C:2022:714, paragraph 60).

111 It is in the light of all of the foregoing preliminary observations that the various measures of the extended producer responsibility scheme at issue in the main proceedings must be examined having regard to the provisions of EU law referred to in the questions referred for a preliminary ruling.

2. The conditions for establishing a monopoly over the activity of the collective fulfilment of extended producer responsibility obligations

112 The first part of the second question and the third to fifth questions concern, first of all, the conditions governing the establishment of a monopoly over the collective fulfilment of extended producer responsibility obligations.

(a) Restrictions on the freedom of establishment and the freedom to provide services

113 Article 37(2) of the ZVO-2 provides for the grant of an exclusive right to a single organisation entrusted with carrying out that activity for a given category of products, thus establishing in favour of that organisation a monopoly over that activity.

114 In order to ascertain whether such a measure comes within the scope of Article 15 of Directive 2006/123, it must be borne in mind that the concept of 'requirement' in Article 15(2) of that directive, must be understood, in accordance with Article 4(7) of that directive, as referring, in particular, to 'any obligation, prohibition, condition or limit provided for in the laws, regulations or administrative provisions of the Member States' (see, to that effect, judgment of 7 November 2018, *Commission* v *Hungary*, C-171/17, EU:C:2018:881, paragraph 77 and the case-law cited).

115 Moreover, it is settled case-law that the concept of 'restriction' within the meaning of Articles 49 and 56 TFEU relates to measures which prohibit, impede or render less attractive the exercise of the freedom of establishment or the freedom to provide services, such as measures taken by a Member State which, although applicable without distinction, affect access to the market for undertakings from other Member States (see, to that effect, judgments of 29 March 2011, *Commission* v *Italy*, C-565/08, EU:C:2011:188, paragraphs 45 and 46 and the case-law cited, and of 8 June 2023, *Fastweb and Others (Time frame for billing)*, C-468/20, EU:C:2023:447, paragraphs 81 and 82 and the case-law cited).

116 In that regard, it must be held that the establishment, by Article 37(2) of the ZVO-2, of a monopoly over the collective fulfilment of extended producer responsibility obligations, since the monopoly thus established constitutes neither a requirement as regards the matters covered by Directive 2005/36 nor a requirement laid down in other EU instruments, is a requirement which restricts access to the service activity concerned to particular providers by reason of the specific nature of the activity concerned, within the meaning of Article 15(2)(d) of Directive 2006/123. Indeed, it is clear from the case-law that national legislation which restricts access to an activity of provision of services to a single private or public undertaking through the establishment of a monopoly comes within the scope of such a requirement (see, to that effect, judgment of 7 November 2018, *Commission* v *Hungary*, C-171/17, EU:C:2018:881, paragraph 79).

117 Furthermore, as regards the freedom to provide services, it is settled case-law that national legislation, such as Article 37(2) of the ZVO-2, under which exclusive rights to carry on an economic activity are conferred on a single public or private operator, constitutes a restriction of that fundamental freedom (see, to that effect, judgments of 7 November 2018, *Commission* v *Hungary*, C-171/17, EU:C:2018:881, paragraph 88, and of 2 March 2023, *Bursa Română de Mărfuri*, C-394/21, EU:C:2023:146, paragraph 47).

(b) Justification for the restrictions in question

118 In accordance with the case-law cited in paragraphs 98 to 110 of the present judgment, it is necessary to ascertain whether those restrictions may nevertheless be justified.

(1) The condition of non-discrimination

119 As regards the condition of non-discrimination, it should be noted that the extended producer responsibility scheme at issue in the main proceedings applies to all producers that place products on the market in Slovenia without directly or indirectly making a distinction on the basis of their nationality or, in the case of companies, the location of their registered office. In particular, it is apparent from Article 34(1), (4) and (6) of the ZVO-2 that a producer established in a Member State other than the Republic of Slovenia and that markets products in the latter Member State is, in principle, subject to the extended responsibility obligations laid down by that law.

(2) Whether there are overriding reasons in the public interest

120 It is apparent from the documents before the Court that the Slovenian legislature adopted the extended producer responsibility scheme at issue in the main proceedings in order to comply with the relevant minimum requirements set out in Article 8a of Directive 2008/98 and with the environmental objectives pursued by that directive. The Slovenian Government submits that that scheme seeks to improve the extended producer responsibility system and the system for managing waste from products covered by that extended responsibility in Slovenia, in particular by reducing the amount of waste to be treated, which forms part of the pursuit of the objectives of protection of the environment and public health. It claims, in that regard, that that scheme was a response to inefficient waste management under the ZVO-1, as evidenced by the accumulation of packaging waste among the providers of local public municipal waste collection services.

121 Such objectives constitute overriding reasons in the general interest capable of justifying restrictions on the freedom of establishment and the freedom to provide services. First, as regards the justification of the requirements coming within the scope of Directive 2006/123, Article 4(8) of that directive defines the concept of 'overriding reasons relating to the public interest' as referring to reasons recognised as such in the case-law of the Court, which include, inter alia, the protection of public health and the protection of the environment and the urban environment.

122 Second, it is settled case-law that protection of the environment constitutes an overriding reason in the public interest capable of justifying restrictions on fundamental freedoms (see, to that effect, judgments of 14 December 2004, *Radlberger Getränkegesellschaft and S. Spitz*, C-309/02, EU:C:2004:799, paragraph 75, and of 19 January 2023, *CIHEF and Others*, C-147/21, EU:C:2023:31, paragraph 51). The same is true of the objectives of guaranteeing the quality of services and protection of public health (see, to that effect, judgment of 19 May 2009, *Commission* v *Italy*, C-531/06, EU:C:2009:315, paragraph 51, and of 29 July 2019, *Commission* v *Austria (Civil engineers, patent agents and veterinary surgeons)*, C-209/18, EU:C:2019:632, paragraph 89 and the case-law cited).

123 In so far as the Slovenian Government also relies on the objective of reducing the costs of waste management borne by the producers concerned and thus bases its argument on economic efficiency, it should be borne in mind that, according to settled case-law, objectives of a purely economic nature cannot constitute an overriding reason in the public interest capable of justifying a restriction on a fundamental freedom guaranteed by the FEU Treaty (see, to that effect, judgment of 8 June 2023, *Prestige and Limousine*, C-50/21, EU:C:2023:448, paragraph 70 and the case-law cited). However, the Court has accepted that national legislation may constitute a justified restriction on a fundamental freedom when it is dictated by reasons of an economic nature in the pursuit of an objective in the public interest (see, to that effect, judgment of 22 October 2013, *Essent and Others*, C-105/12 to C-107/12, EU:C:2013:677, paragraph 52 and the case-law cited). Therefore, even if it is considered that the extended producer responsibility scheme at issue in the main proceedings is dictated by such grounds of economic efficiency, those grounds cannot, as such, constitute overriding reasons in the public interest capable of justifying a restriction on a fundamental freedom guaranteed by EU law, with the result that it is for the national court ultimately to determine whether that scheme pursues, notwithstanding those grounds, the objective of protecting the environment and public health.

(3) The condition of proportionality

124 As regards the condition of proportionality, it is for the referring court, which alone has jurisdiction to assess the facts giving rise to the main proceedings and to interpret the extended producer responsibility scheme at issue in the main proceedings, to determine whether that scheme satisfies the conditions set out in paragraphs 98 to 104 of the present judgment. Nevertheless, the Court of Justice, which is called on to provide an answer of use to the referring court, may provide guidance based on the documents relating to the main proceedings and on the written observations which have been submitted to it, in order to enable the court in question to give judgment (see, to that effect, judgments of 7 September 2022, *Cilevičs and Others*, C-391/20, EU:C:2022:638, paragraphs 72 and 73, and of 17 October 2024, *FA.RO. di YK & C.*, C-16/23, EU:C:2024:886, paragraph 93).

(i) The suitability of the restrictions for securing the attainment of the objectives pursued

125 As regards the ability of the monopoly over the collective fulfilment of extended producer responsibility obligations for each waste stream covered by that extended responsibility to achieve the objectives of protecting the environment and public health, it is apparent from the information brought to the Court's attention that that monopoly was established in order to improve the accessibility, transparency and uniform pricing of the extended producer responsibility scheme applicable to a given category of products and, more generally, the entire waste management system concerned.

126 While it thus appears that such a measure is, in principle, capable of achieving the objectives of protecting the environment and public health, it is still necessary, in accordance with the case-law cited in paragraphs 99 and 100 of the present judgment, for it to pursue those objectives in a consistent and systematic manner, which it is for the referring court to verify following a global assessment of the circumstances surrounding the adoption and implementation of the national provisions concerned (see, to that effect, judgment of 28 February 2018, *Sporting Odds*, C-3/17, EU:C:2018:130, paragraph 64 and the case-law cited).

127 In the present case, Interzero and Others submitted, in their written observations, that the creation of a monopoly in the sector of collective fulfilment of extended producer responsibility obligations is not a measure capable of pursuing, in a consistent manner, the objective of protecting the environment, since that measure is liable to undermine the objective of transitioning to a circular economy. The establishment of that monopoly could, first, deter the producers concerned from developing innovative and more environmentally efficient circular solutions in order to improve their competitive position and, second, prevent the transmission of knowledge and best practices from other Member States. The result would ultimately be an increase in costs for those producers.

128 It is true, as is apparent from Article 1 of Directive 2008/98, that extended producer responsibility schemes established in accordance with that directive must be consistent with the systematic aim of transitioning to a circular economy and maintaining the long-term competitiveness of the European Union. However, there is nothing in the documents before the Court to suggest that a situation characterised by the absence of a competitive market in the field of activity of the collective fulfilment of extended producer responsibility obligations, such as that resulting from the establishment of a monopoly for the organisation entrusted with the collective fulfilment of the relevant obligations, would ultimately compromise the effective management of waste sought by the Member State that introduced that monopoly.

129 Furthermore, it must be pointed out that, since national legislation establishing a monopoly constitutes a measure which is particularly restrictive of the fundamental freedoms, it must be accompanied by a legislative framework suitable for ensuring that the holder of that monopoly will in fact be able to pursue, in a consistent and systematic manner, the objectives thus determined by means of a supply that is quantitatively measured and qualitatively planned by reference to those objectives and subject to strict control by the public authorities (see, to that effect, judgment of 8 September 2010, *Stoß and Others*, C-316/07, C-358/07 to C-360/07, C-409/07 and C-410/07, EU:C:2010:504, paragraph 83). Thus, EU law may require the imposition of certain restrictions on the holder of a monopoly (see, to that effect, judgment of 15 September 2011, *Dickinger and Ömer*, C-347/09, EU:C:2011:582, paragraph 72), in particular with a view to avoiding any risk of improper conduct on the part of the holder of that monopoly that might undermine the objectives pursued.

130 It is for the referring court to ascertain whether the extended producer responsibility scheme at issue in the main proceedings provides, as a whole, the necessary safeguards in that regard.

(ii) Whether the restrictions concerned are strictly necessary and proportionate

131 As is apparent from both Article 15(3)(c) of Directive 2006/123 and the case-law of the Court, measures which restrict a fundamental freedom may be justified only if the objective pursued cannot be attained by measures which, while being equally effective, are less restrictive (see, to that effect, judgments of 7 September 2022, *Cilevičs and Others*, C-391/20, EU:C:2022:638, paragraph 81 and the case-law cited, and of 7 November 2024, *Centro di Assistenza Doganale Mellano*, C-503/23, EU:C:2024:933, paragraph 83).

132 As regards the choice of measures capable of attaining the objectives of protecting the environment and public health, it must be borne in mind, first, that the protection of the environment is one of the essential objectives of the European Union and is both fundamental and inter-disciplinary in nature (see, to that effect, judgment of 28 February 2012, *Inter-Environnement Wallonie and Terre wallonne*, C-41/11, EU:C:2012:103, paragraph 57 and the case-law cited). Second, public health ranks foremost among the assets and interests protected by the FEU Treaty and it is for the Member States to determine the level of protection which they wish to afford to public health and the way in which that level is to be achieved. To that end, the Member States enjoy a margin of discretion in determining, having regard to the particular national circumstances and the importance which those States attach to the attainment of more specific legitimate objectives under EU law, such as the development of a high-quality, balanced waste management system open to all, the measures which are likely to achieve concrete results (see, to that effect, judgments of 28 September 2006, *Ahokainen and Leppik*, C-434/04, EU:C:2006:609, paragraph 32, and of 12 November 2015, *Visnapuu*, C-198/14, EU:C:2015:751, paragraph 118).

133 It follows that, while complying with the requirements laid down, in particular, by Directive 2008/98 and the relevant EU sectoral rules, the Member States are, in principle, free to set the objectives of their waste management policy and, where appropriate, to define in detail the level of protection of the environment and public health sought (see, by analogy, judgment of 15 September 2011, *Dickinger and Ömer*, C-347/09, EU:C:2011:582, paragraph 47 and the case-law cited).

134 Consequently, a Member State seeking to ensure a particularly high level of protection with regard to the environment and public health may be entitled to take the view that it is only by granting exclusive rights to a single entity which is subject to strict control by the public authorities that they will be able to pursue those objectives sufficiently effectively (see, by analogy, judgments of 8 September 2010, *Stoß and Others*, C-316/07, C-358/07 to C-360/07, C-409/07 and C-410/07, EU:C:2010:504, paragraph 81, and of 15 September 2011, *Dickinger and Ömer*, C-347/09, EU:C:2011:582, paragraph 48).

135 In the present case, the applicants in the main proceedings are of the view that the objectives pursued by the Slovenian legislature could be achieved by less restrictive measures, namely by laying down conditions as to the quality of the services and the amount of the costs which the organisation entrusted with the collective fulfilment of the extended producer responsibility obligations may charge to the producers concerned, and by creating an independent agency which would monitor the extended producer responsibility scheme concerned.

136 In that regard, the Court has held that the question whether, in order to achieve the objectives pursued, it would be preferable, rather than granting an exclusive operating right to a licensed body, to adopt regulations imposing the necessary code of conduct on the economic operators concerned comes, in principle, within the scope of the discretion of the Member States, subject however to the proviso that the choice made in that regard must not be disproportionate to the aim pursued (see, to that effect, judgment of 21 September 1999, *Läärä and Others*, C-124/97, EU:C:1999:435, paragraph 39).

137 It is thus for the referring court to ascertain whether, by adopting the extended producer responsibility scheme at issue in the main proceedings, the Slovenian legislature was genuinely seeking to ensure a particularly high level of protection with regard to the objectives of protecting the environment and public health and whether, having regard to the level of protection sought, the establishment of a monopoly over the collective fulfilment of extended producer responsibility obligations may in fact be considered necessary (see, by analogy, judgment of 15 September 2011, *Dickinger and Ömer*, C-347/09, EU:C:2011:582, paragraph 54).

138 In respect of the question whether the measures at issue are proportionate *stricto sensu*, as follows from paragraph 104 of the present judgment, the referring court must also verify that those measures are not disproportionate to the objectives of protection of the environment and public health pursued. In that context, that court may take into account, inter alia, the shortcomings which, as is apparent from the order for reference, characterised the extended producer responsibility scheme provided for by the ZVO-1 and compromised the effective management of waste. It may also take into account the Slovenian Government's argument that the extended producer responsibility scheme at issue in the main proceedings enables the State to ensure the transparency of the functioning of the single organisation and to prevent distortions of competition on the market for waste management, and is more economic and simpler for producers, thereby contributing to better waste management quality control.

(4) Compliance with Articles 16 and 17 of the Charter and with the principles of legal certainty and the protection of legitimate expectations

139 In accordance with the case-law cited in paragraphs 105 to 110 above, it remains necessary to examine the establishment of a monopoly over the collective fulfilment of extended producer responsibility obligations, by the extended producer responsibility scheme at issue in the main proceedings, in the light of the fundamental rights guaranteed by the Charter, in the present case Articles 16 and 17 thereof, and in the light of the general principles of EU law.

140 As regards, in the first place, Article 16 of the Charter, it provides that the freedom to conduct a business in accordance with EU law and national laws and practices is recognised. The protection afforded by that article includes, in particular, the freedom to exercise an economic or commercial activity and the freedom of contract (see, to that effect, judgments of 22 January 2013, *Sky Österreich*, C-283/11, EU:C:2013:28, paragraph 42, and of 30 April 2024, *Trade Express-L and DEVNIA TSIMENT*, C-395/22 and C-428/22, EU:C:2024:374, paragraph 76).

141 Having regard to the wording of Article 16 of the Charter, which provides that the freedom to conduct a business is recognised in accordance with EU law and national laws and practices and thus differs from the wording of the other fundamental freedoms laid down in Title II of the Charter, yet is similar to that of certain provisions of Title IV of the Charter, that freedom may therefore be subject to a broad range of interventions on the part of public authorities which may, in the public interest, limit the exercise of economic activity. That circumstance is reflected,

in particular, in the way in which EU legislation and national legislation and practices should be assessed in the light of the principle of proportionality under Article 52(1) of the Charter (see, to that effect, judgment of 21 December 2021, *Bank Melli Iran*, C-124/20, EU:C:2021:1035, paragraphs 81 and 82 and the case-law cited).

142 In that regard, it is sufficient to note that, in so far as the provisions of the extended producer responsibility scheme at issue in the main proceedings establishing a monopoly over the collective fulfilment of extended producer responsibility obligations constitute, as stated in paragraph 116 above, a restriction on the freedom of establishment, they also constitute, in principle, a limitation on the exercise of the freedom to conduct a business, enshrined in Article 16 of the Charter, of the operators concerned (see, to that effect, judgment of 8 May 2019, *PI*, C-230/18, EU:C:2019:383, paragraph 65).

143 In the second place, under Article 17(1) of the Charter, everyone has the right to own, use, dispose of and bequeath his or her lawfully acquired possessions and no one may be deprived of his or her possessions, except in the public interest and in the cases and under the conditions provided for by law, subject to fair compensation being paid in good time for his or her loss. The use of property may be regulated by law in so far as is necessary for the general interest.

144 Article 17(1) of the Charter contains three distinct rules. The first rule, which appears in the first sentence of that provision, is of a general nature and gives concrete expression to the principle of respect for property. The second rule, set out in the second sentence of that provision, refers to a person being deprived of property and makes that deprivation subject to certain conditions. The third rule, which is contained in the third sentence of that provision, recognises that the Member States have the power to regulate the use of property in so far as is necessary for the general interest. Those rules are not, however, unrelated to each other. Indeed, the second and third rules relate to specific examples of infringements of the right to property and are to be interpreted in the light of the principle enshrined in the first rule (see, to that effect, judgments of 10 September 2024, *Neves 77 Solutions*, C-351/22, EU:C:2024:723, paragraph 81 and the case-law cited, and of 4 October 2024, *Aeris Invest* v *Commission and SRB*, C-535/22 P, EU:C:2024:819, paragraph 214).

145 The protection afforded by Article 17(1) of the Charter concerns rights with an asset value creating an established legal position under the legal system concerned, enabling the holder to exercise those rights autonomously and for his or her own benefit (judgments of 21 May 2019, *Commission* v *Hungary (Usufruct over agricultural land)*, C-235/17, EU:C:2019:432, paragraph 69 and the case-law cited, and of 5 May 2022, *BPC Lux 2 and Others*, C-83/20, EU:C:2022:346, paragraph 39).

146 In that regard, it is apparent from the case-law of the European Court of Human Rights relating to Article 1 of Protocol No 1 to the European Convention for the Protection of Human Rights and Fundamental Freedoms, signed in Paris on 20 March 1952, which must be taken into account pursuant to Article 52(3) of the Charter for the purpose of interpreting Article 17 of the Charter as the minimum threshold of protection (see, to that effect, judgments of 21 May 2019, *Commission* v *Hungary (Usufruct over agricultural land)*, C-235/17, EU:C:2019:432, paragraph 72 and the case-law cited and of 10 September 2024, *Neves 77 Solutions*, C-351/22, EU:C:2024:723, paragraph 80), that interests associated with the exploitation of a licence constitute property interests attracting the protection of that Article 1 of Protocol No 1 (see, to that effect, ECtHR, 7 June 2012, *Centro Europa 7 S.r.l. and Di Stefano v. Italy*, CE:ECHR:2012:0607JUD003843309, § 178). Consequently, the revocation by operation of law of a licence entitling its holder to pursue

an economic activity amounts to a limitation of the right to property guaranteed by that article which, as a measure controlling the use of property, comes within the second paragraph of that article (see, to that effect, ECtHR, 13 January 2015, *Vékony v. Hungary*, CE:ECHR:2015:0113JUD006568113, §§ 29 and 30, and ECtHR, 5 April 2022, *NIT S.r.l. v. The Republic of Moldova*, CE:ECHR:2022:0405JUD002847012, §§ 235 and 236).

147 Furthermore, again according to that case-law, legislative intervention in respect of existing contractual claims may also constitute a measure controlling the use of property and, therefore, a limitation of the right to property (see, to that effect, ECtHR, 20 July 2004, *Bäck v. Finland*, CE:ECHR:2004:0720JUD003759897, §§ 57 and 68).

148 In the present case, it is apparent from the information brought to the Court's attention that, subject to verification by the referring court, the establishment of a monopoly for the single organisation by the extended producer responsibility scheme at issue in the main proceedings entails both the revocation by operation of law of the environmental authorisations and the decisions approving the existing common plans, issued to the ZVO-1 operators for the purpose of carrying out the collective fulfilment of extended producer responsibility obligations, and the termination by operation of law of all the contracts concluded between those operators and the producers, and with the providers of waste management services. Such consequences may be regarded as a limitation on the exercise of the right to property relating to how the use of property is governed for the purposes of the third sentence of Article 17(1) of the Charter.

149 As regards the justification for such limitations on the freedom and right provided for in Articles 16 and 17 of the Charter, first, it is common ground that those limitations, relating to the establishment of a monopoly and to the transitional arrangements provided for by the Slovenian legislature in that context, figure in the extended producer responsibility scheme at issue in the main proceedings, as established by the ZVO-2.

150 Second, those limitations respect the essence of Articles 16 and 17 of the Charter. As regards, first, the condition of respect for the essence of the freedom to conduct a business, it should be noted that the establishment of a monopoly over an economic activity to the detriment of existing operators does not prevent all business activity on the part of those operators as such, indeed, primary law expressly permits the grant of exclusive rights to one or more public or private operators in respect of a given economic activity and the conditions for the establishment of a monopoly over an activity resulting from the grant of such rights must be assessed, as follows from paragraph 141 of the present judgment, in the context of the examination of the proportionality of such a measure.

151 Second, since, as stated in paragraph 148 of the present judgment, that measure relates to how the use of property is governed for the purposes of the third sentence of Article 17(1) of the Charter, it is not capable of undermining the essential content of the right to property (see, to that effect, judgment of 10 September 2024, *Neves 77 Solutions*, C-351/22, EU:C:2024:723, paragraph 88 and the case-law cited).

152 Third, those same limitations are intended, as stated in paragraph 120 of the present judgment, to ensure a well-functioning waste management system and, accordingly, the attainment of the objectives of protection of the environment and public health, therefore they genuinely meet objectives of general interest recognised by the European Union.

153 Fourth, as regards observance of the principle of proportionality, it follows from paragraphs 125 to 136 of the present judgment that such limitations appear, in themselves, to be appropriate for attaining the objectives pursued and also necessary for that purpose. Nevertheless, in the context of a legislative amendment, respect for the fundamental rights of the economic operators concerned by that amendment also requires the national legislature to put in place appropriate measures to protect those operators against measures which, in view of their particular situation, impose an excessive burden on them (see, to that effect, ECtHR, 13 January 2015, *Vékony v. Hungary*, CE:ECHR:2015:0113JUD006568113, §§ 34 and 35; ECtHR, 16 October 2018, *Könyv-Tár Kft and Others v. Hungary*, CE:ECHR:2018:1016JUD002162313, §§ 48 and 50).

154 Thus it follows from the case-law of the Court relating to the principles of legal certainty and the protection of legitimate expectations that, in the context of a legislative amendment, a national legislature must take account of the particular situations of the economic operators concerned by that amendment and provide, where appropriate, for adaptations to the application of the new rules (see, to that effect, judgments of 7 June 2005, *VEMW and Others*, C-17/03, EU:C:2005:362, paragraph 81, and of 17 December 2015, *Szemerey*, C-330/14, EU:C:2015:826, paragraph 48).

155 In that regard, the Court has held that an economic operator who made costly investments in order to comply with the scheme adopted previously by the national legislature could see his, her or its interests considerably affected by the withdrawal of that scheme before the date announced, all the more so if that withdrawal takes place suddenly and unforeseeably, without leaving him, her or it enough time to adapt to the new legal situation (judgments of 11 June 2015, *Berlington Hungary and Others*, C-98/14, EU:C:2015:386, paragraph 87 and the case-law cited, and of 22 September 2022, *Admiral Gaming Network and Others*, C-475/20 to C-482/20, EU:C:2022:714, paragraph 64).

156 Accordingly, it is for the national legislature to provide for a transitional period of sufficient length to enable economic operators to adapt to the changes affecting them, or a system of reasonable compensation for the damage suffered by them (see, to that effect, judgments of 14 December 2004, *Radlberger Getränkegesellschaft and S. Spitz*, C-309/02, EU:C:2004:799, paragraph 81; of 11 June 2015, *Berlington Hungary and Others*, C-98/14, EU:C:2015:386, paragraph 85 and the case-law cited; and of 20 December 2017, *Global Starnet*, C-322/16, EU:C:2017:985, paragraph 48). Where it appears necessary in order to prevent any excessive burden being placed on those operators, it cannot be ruled out that those two measures may be required cumulatively.

157 In the present case, the referring court notes, first, that the transitional provisions of the ZVO-2 set out in Article 275 thereof do not lay down a precise time limit at the end of which the authorisations granted to ZVO-1 operators and the contracts which they have concluded with the producers and providers of waste management services will come to an end. In fact, that period is linked to the communication, by the single organisation, of the fact that it has begun to implement collectively the extended producer responsibility obligations and to the adoption of the declaratory decision by the competent ministry. Second, the extended producer responsibility scheme at issue in the main proceedings does not provide for any compensation mechanism for ZVO-1 operators.

158 It is for the referring court to examine whether, in the circumstances of the present case, the extended producer responsibility scheme at issue in the main proceedings is liable to be excessively burdensome for ZVO-1 operators. To that end, it must take into account all the relevant factors which are apparent in particular from the wording, general scheme and

objectives of the legislation concerned (see, to that effect, judgments of 22 September 2022, *Admiral Gaming Network and Others*, C-475/20 to C-482/20, EU:C:2022:714, paragraph 65 and the case-law cited) and ascertain whether a prudent and circumspect economic operator could have foreseen the adoption of a measure likely to affect his, her or its interests (see, to that effect, judgments of 15 April 2021, *Federazione nazionale delle imprese elettrotecniche ed elettroniche (Anie) and Others*, C-798/18 and C-799/18, EU:C:2021:280, paragraph 42, and of 22 September 2022, *Admiral Gaming Network and Others*, C-475/20 to C-482/20, EU:C:2022:714, paragraph 62).

159 In that regard, account must be taken of all the circumstances characterising the individual situation of the ZVO-1 operators concerned, such as the fact that the authorisations they hold were issued for an indefinite period, and of all the circumstances surrounding the adoption of the extended producer responsibility scheme at issue in the main proceedings. Indeed, it appears that, before the adoption of the ZVO-2, the Slovenian legislature had acted on two occasions to amend the extended producer responsibility scheme until then provided for by the ZVO-1, in particular by amending that extended responsibility scheme, with effect from 1 January 2021, by removing the exclusion from the application of that previously applicable scheme to producers placing less than 15 tonnes of packaging on the market per year.

160 In the light of the foregoing, it must be held that, subject to compliance with the principle of proportionality, Articles 8 and 8a of Directive 2008/98, Article 15 of Directive 2006/123, Articles 49 and 56 TFEU, Articles 16 and 17 of the Charter and the principles of legal certainty and the protection of legitimate expectations do not preclude national legislation which establishes a monopoly situation through the creation of an organisation entrusted with the collective fulfilment of extended producer responsibility obligations that has the exclusive right to carry out that activity for a given category of products, while providing for both the revocation by operation of law of the authorisations which enabled economic operators to carry on that activity up until that point and the termination by operation of law of all the contracts concluded by those operators in the exercise of the same activity, provided, however, that that legislation, first, is accompanied by the establishment of a legislative framework capable of ensuring that the holder of that monopoly will in fact be able to pursue, in a consistent and systematic manner, the objectives of protection of the environment and public health which the Member State concerned has set itself by means of a supply that is quantitatively measured and qualitatively structured in the light of those objectives and subject to strict control by the public authorities, and, second, provides for adaptations to the application of the new rules to prevent any excessive burden being placed on the economic operators concerned, in particular a transitional period of sufficient duration to enable them to adapt to the changes or a system of reasonable compensation for the damage suffered by them.

3. The measures imposed on the holder of the monopoly and on persons holding shares therein

161 By the second part of its second question, and by its sixth to ninth questions, the referring court asks, next, about a number of measures imposed on the organisation holding the monopoly in respect of the fulfilment of extended producer responsibility obligations and on the persons with shareholdings in that organisation.

(a) Restrictions on the freedom of establishment and the freedom to provide services

162 In the first place, by the second part of its second question, the referring court questions the requirement, laid down in Article 38(1) of the ZVO-2, that the single organisation must carry out the activity of the collective fulfilment of extended producer responsibility obligations on a non-profit-making basis.

163 In that regard, it should be noted that such an obligation may be classified as a requirement requiring the provider to have a specific legal form, within the meaning of Article 15(2)(b) of Directive 2006/123, provided that national law does in fact provide for a specific legal form for non-profit-making entities. The Court has held that, in the light of recital 73 of that directive, Article 15(2)(b) of Directive 2006/123 refers, inter alia, to the requirement that the provider of a service must be constituted as a non-profit-making organisation (see, to that effect, judgments of 23 February 2016, *Commission* v *Hungary*, C-179/14, EU:C:2016:108, paragraph 62, and of 26 June 2019, *Commission* v *Greece*, C-729/17, EU:C:2019:534, paragraph 60).

164 In the second place, as regards the national legislation referred to in the sixth question referred for a preliminary ruling, Article 38(4) of the ZVO-2 lays down, for producers of products subject to extended producer responsibility obligations and placing on the market at least 51% of the total quantity of products of the same category to which that extended responsibility obligation applies, the obligation to set up a single organisation carrying out the collective fulfilment of their obligations in that regard and to hold shares in that organisation. Furthermore, those producers cannot be persons who collect or treat waste from those products.

165 First, the obligation on certain producers to set up an organisation entrusted with the collective fulfilment of their extended producer responsibility obligations for the category of waste concerned, to which the obligation to hold a shareholding in that category is inextricably linked, does not come within any of the categories of requirements listed in Article 15(2) of Directive 2006/123.

166 Since, as is apparent from paragraphs 96 and 97 of the present judgment, that requirement must be assessed in the light of primary law, it is important to bear in mind that, where a national measure relates simultaneously to the freedom of establishment and the freedom to provide services, the Court will in principle examine it in the light of only one of those freedoms if it appears, in the circumstances of the case, that the other is entirely secondary in relation to the first and may be considered together with it. In order to determine the predominant fundamental freedom, the purpose of the legislation concerned must be taken into consideration (see, to that effect, judgment of 7 September 2022, *Cilevičs and Others*, C-391/20, EU:C:2022:638, paragraphs 50 and 51 and the case-law cited).

167 In order to distinguish between the respective scopes of the freedom of establishment and the freedom to provide services, it must be determined whether or not the economic operator is established in the Member State in which it offers the services in question. In that regard, the concept of 'establishment' involves the actual pursuit of an economic activity through a fixed establishment in the host Member State for an indefinite period (see, to that effect, judgments of 22 November 2018, *Vorarlberger Landes- und Hypothekenbank*, C-625/17, EU:C:2018:939, paragraphs 34 and 35, and of 4 October 2024, *Lithuania and Others* v *Parliament and Council (Mobility Package)*, C-541/20 to C-555/20, EU:C:2024:818, paragraph 364 and the case-law cited).

168 By contrast, services that are not offered on a stable and continuous basis from an establishment in the Member State of destination constitute a 'provision of services' for the purposes of Article 56 TFEU (judgments of 7 September 2022, *Cilevičs and Others*, C-391/20, EU:C:2022:638, paragraph 53 and the case-law cited, and of 21 December 2023, *European Superleague Company*, C-333/21, EU:C:2023:1011, paragraph 245).

169 In the present case, Article 38(4) and (5) of the ZVO-2 imposes specific obligations on certain producers of products subject to extended producer responsibility owing to the particular significance of the volume of their economic activity on the Slovenian market. In that regard, it must be held that economic activities of such significance carried out by producers on the national market are, as a general rule, carried out on a stable and continuous basis from an establishment in the Member State concerned. It follows that, subject to verification by the referring court of the situation of the producers concerned, that provision comes predominantly within the scope of freedom of establishment.

170 Even though nationals of other Member States who may come within the scope of that provision are not prevented from establishing themselves in Slovenian territory in order to carry out their economic activity, the obligation, as the case may be, to create an entity established in Slovenia entrusted with carrying out the collective fulfilment of their extended producer responsibility obligations and the obligation to hold shares in the single organisation is likely to entail administrative and financial burdens in addition to those linked to the exercise of their own economic activity.

171 It follows that the extended producer responsibility scheme at issue in the main proceedings is liable to make it less attractive for nationals of other Member States to establish themselves in the Member State concerned, with the result that it constitutes a restriction on the freedom of establishment guaranteed by Article 49 TFEU.

172 Second, the condition that only producers may hold shares in the single organisation constitutes a requirement relating to the shareholding of a company, within the meaning of Article 15(2)(c) of Directive 2006/123. That provision covers any requirement relating to the composition of the entity concerned or the status of its shareholders (see, to that effect, judgments of 1 March 2018, *CMVRO*, C-297/16, EU:C:2018:141, paragraph 77; of 26 June 2019, *Commission* v *Greece*, C-729/17, EU:C:2019:534, paragraph 63; and of 29 July 2019, *Commission* v *Austria (Civil engineers, patent agents and veterinary surgeons)*, C-209/18, EU:C:2019:632, paragraph 84).

173 In the third place, as regards the national legislation referred to in the seventh to ninth questions, Article 38(6) to (9) of the ZVO-2 provides, first, that producers with a shareholding in the single organisation are prohibited from carrying out the activity of waste collection and treatment and, second, that capital or family ties between that organisation, the members of its management body and producers that have a shareholding in it, on the one hand, and the persons who collect and treat waste and persons who have voting rights in the governing body or supervisory body of that organisation, on the other hand, are prohibited.

174 In the light of the definition set out in paragraph 172 of the present judgment, which covers any requirement relating to the composition of the entity concerned or the status of its shareholders, it must be held that such legislation constitutes a requirement relating to the shareholding of a company, within the meaning of Article 15(2)(c) of Directive 2006/123.

(b) Justification for the restrictions in question

175 In accordance with the case-law cited in paragraphs 98 to 110 of the present judgment, it is necessary to ascertain whether those restrictions may nevertheless be justified.

(1) The condition of non-discrimination

176 As stated in paragraph 119 of the present judgment, the extended producer responsibility scheme at issue in the main proceedings applies to all producers that place products on the market in Slovenia without directly or indirectly making a distinction on the basis of their nationality or, in the case of companies, the location of their registered office. It follows that the aspects of that scheme referred to in paragraphs 162 to 174 of the present judgment are not directly or indirectly discriminatory.

(2) Whether there are overriding reasons in the public interest

177 As is apparent from the documents before the Court, all the requirements imposed on the single organisation and on the producers who hold shares in it are intended to strengthen the organisational responsibility of producers within extended producer responsibility schemes, guarantee the procedural conditions for the monopolistic provision of services for the collective fulfilment of extended producer responsibility obligations and avoid conflicts of interest between the operators concerned. Those requirements thus serve, more generally, to make the system for the management of waste from products covered by extended producer responsibility in Slovenia more effective, by addressing the waste management problems identified under the ZVO-1. Such purposes pursue the objectives of protecting the environment and public health, which constitute, as is apparent from paragraphs 120 to 122 of the present judgment, overriding reasons in the public interest capable of justifying restrictions on the freedom to provide services.

178 In so far as the Slovenian Government also relies on the objective of reducing costs for producers and thus bases its argument on economic efficiency, it is for the referring court, as noted in paragraph 123 of the present judgment, to ascertain whether, ultimately, the restrictions concerned pursue the objective of protecting the environment and public health.

(3) The condition of proportionality

(i) The suitability of the restrictions for securing the attainment of the objectives pursued

179 As regards, first, the requirement that the single organisation must carry out its activity on a non-profit-making basis, there is nothing in the documents before the Court to suggest that such a measure is not appropriate for ensuring a well-functioning waste management system and, therefore, the attainment of the objectives of protection of the environment and public health pursued by the Slovenian legislature. As the Slovenian Government submits, the requirement that the collective fulfilment of extended producer responsibility obligations be carried out on a non-profit-making basis is capable of ensuring that the costs of such a service are charged to producers taking into account only the actual costs of fulfilling those obligations, those costs being fixed on the basis of the sustainable, reparable, reusable and recyclable nature of the product concerned. Such a measure is, in particular, consistent with the ‘polluter pays’ principle enshrined in EU law, as noted in paragraph 81 of the present judgment.

180 As regards, second, the measures relating to the creation of the organisation entrusted with the collective fulfilment of extended producer responsibility obligations and the holding of shares in that organisation, it must be borne in mind that, as is apparent from the definition in Article 3(21) of Directive 2008/98, the purpose of extended producer responsibility schemes established in accordance with Articles 8 and 8a of that directive is to ensure that producers of products subject to extended responsibility obligations assume not only the financial responsibility for the management of waste from those products, but also, where appropriate, the organisational responsibility for that activity.

181 Both the obligation on producers subject to extended producer responsibility obligations that place on the market at least 51% of the total quantity of products of the same category covered by the extended producer responsibility to set up an organisation to carry out the collective fulfilment of their obligations in that regard and to hold shares in that organisation, and the obligation on the shareholders in that organisation to be producers, are directly consistent with that objective and thus appear appropriate for securing the attainment of the objectives of protecting the environment and public health. This is particularly true since these rules make it possible, in fact, necessarily to involve the producers with the largest shares of the relevant market not only financially but also organisationally in the management of the 'waste' phase of a product's life cycle.

182 As regards, third, the rules relating to the prohibition of vertical links between organisations entrusted with the collective fulfilment of extended producer responsibility obligations, shareholders in those organisations, the management bodies of those organisations and providers of waste management services, it is apparent from recital 22 of Directive 2018/851 that the minimum requirements laid down in Article 8a of Directive 2008/98 are intended, inter alia, to ensure a level playing field and to reduce the possibility of conflicts of interest emerging between those organisations and the waste management bodies used by those organisations.

183 In so far as those rules are intended to avoid conflicts of interest in the relationships between the various operators involved in the extended producer responsibility scheme at issue in the main proceedings and, as the Advocate General observed, in essence, in point 76 of his Opinion, thus make it possible to reduce the risk of the organisation entrusted with the collective implementation of extended producer responsibility obligations, when awarding public contracts for the provision of waste management services, nevertheless selecting, on the basis of irrelevant considerations, tenderers who do not meet the necessary economic or environmental requirements, that aspect of the extended producer responsibility scheme at issue in the main proceedings also appears appropriate for ensuring the attainment of the objectives of protecting the environment and public health.

(ii) Whether the restrictions concerned are strictly necessary and proportionate

184 As regards, first, the requirement that the single organisation must carry out its activity on a non-profit-making basis, the Slovenian Government asserts that the incentive to make a profit under the ZVO-1 prevented the objective of adequate protection of the environment from being achieved. It is, in any event, for the referring court to ascertain whether the Slovenian legislature had available to it less restrictive measures that would have enabled it to attain the objectives pursued just as effectively.

185 With regard to whether the measures at issue are proportionate *stricto sensu*, as follows from paragraph 104 of the present judgment, the referring court must also verify that those measures are not disproportionate in relation to the objectives of protection of the environment and public health pursued. In that context, that court may take into account, inter alia, the shortcomings which, as is apparent from the order for reference, characterised the extended producer responsibility scheme provided for by the ZVO-1 and compromised the effective management of waste.

186 As regards, second, the measures relating to the creation of the organisation entrusted with the collective fulfilment of extended producer responsibility obligations and the holding of shares in that organisation, the Slovenian Government observes that those measures are intended to ensure that only one single organisation can be created for each category of products covered by extended producer responsibility. In addition, it states that those measures are intended to remedy shortcomings identified under the ZVO-1 as regards the organisational links between producers and the organisations entrusted with the collective fulfilment of extended producer responsibility obligations, and to maximise the influence of producers on the operation of that organisation. That increased influence on the organisation's management, direction and self-monitoring would make producers more accountable since that organisation ensures, in their name and on their behalf, the proper management of waste from products subject to extended producer responsibility.

187 In that regard, it should be noted that the aim of those measures is to enable the creation of the organisation entrusted with the collective fulfilment of extended producer responsibility obligations by producers that place on the market at least 51% of the total quantity of the product concerned. Those measures are thus capable of strengthening the accountability of those producers and, consequently, of helping the extended producer responsibility schemes established under the ZVO-2 function more efficiently.

188 Furthermore, bearing in mind the discretion enjoyed by the Member States when choosing measures capable of attaining the objectives of protection of the environment and public health in order to ensure a particularly high level of protection, the national legislature may, in principle, consider that there is a risk that, if economic operators who are not producers acting on the market concerned are in a position to exert influence on the operation of the organisation entrusted with the collective fulfilment of extended producer responsibility obligations, those operators may adopt management decisions liable to undermine the objectives pursued by that organisation (see, by analogy, judgment of 1 March 2018, *CMVRO*, C-297/16, EU:C:2018:141, paragraph 82).

189 As regards, third, the rules relating to the prohibition of vertical links between the organisations entrusted with the collective fulfilment of extended producer responsibility obligations, the shareholders in those organisations and the waste management service providers, the Slovenian Government submits that those rules are necessary in order to ensure competitiveness in the waste management sector. In particular, the creation of a single organisation in respect of products of the same type could lead to a concentration of demand for certain services, which would give that organisation such a bargaining power that it could upset the economic and competitive balance of the waste management market. The rules on the prohibition of vertical links also aim to reduce conflicts of interest between, on the one hand, the organisations fulfilling extended producer responsibility obligations on behalf of producers and, on the other hand, the waste management providers with which the organisations conclude contracts.

190 It is for the referring court to ascertain whether the Slovenian legislature had the possibility of adopting measures which, at the same time as being less restrictive, would have enabled the objectives pursued to be achieved just as effectively, it being understood that maintaining a level playing field in the waste management sector and the proper functioning of that market are of particular importance in the context of the implementation of Articles 8 and 8a of Directive 2008/98. In that context, it is for that court to take account of the discretion enjoyed by the Member States, having regard to paragraph 134 of the present judgment, in their choice of the measures capable of achieving those objectives.

(4) Compliance with Article 16 of the Charter

191 In accordance with the case-law referred to in paragraphs 105 to 110 of the present judgment, it is still necessary to ascertain whether the extended producer responsibility scheme at issue in the main proceedings is compatible with the fundamental rights guaranteed by the Charter – here, the freedom to conduct a business guaranteed by Article 16 of the Charter.

192 For the same reasons as those set out in paragraphs 179 to 190 of the present judgment, there is nothing in the documents before the Court to suggest that the restrictions on the freedom to conduct a business are not capable of being justified in accordance with the requirements laid down in Article 52(1) of the Charter.

193 In the light of the foregoing, it must be concluded that, subject to compliance with the principle of proportionality, Articles 8 and 8a of Directive 2008/98, Article 15 of Directive 2006/123, Article 49 TFEU and Article 16 of the Charter do not preclude national legislation which:

– imposes on an organisation entrusted with the collective fulfilment of extended producer responsibility obligations an exclusive right to carry out its activity on a non-profit-making basis;

– provides that producers subject to extended producer responsibility obligations that place on the market at least 51% of the total quantity of products of the same category, to which that extended responsibility obligation applies, must set up such an organisation and hold shares in it;

– provides that shareholders in that organisation must be producers on the market concerned;

– prohibits those producers from carrying out the activity of waste collection and treatment and prohibits capital or family ties between, on the one hand, that organisation, the members of its management body and producers who have a shareholding in it and, on the other hand, the persons who collect and treat waste and persons who have voting rights in the governing body or supervisory body of that organisation.

4. The measures imposed on producers wishing to gain access to the national market

194 Lastly, by its tenth question, the referring court seeks guidance in respect of the compatibility with Articles 49 and 56 TFEU and Article 16 of the Charter of the mandatory use of the single organisation for the purposes of collective fulfilment of extended producer responsibility obligations imposed on producers of products intended for household use wishing to gain access to the Slovenian market.

(a) Restrictions on the freedom of establishment and the freedom to provide services

195 As regards the legislation referred to in the tenth question, Article 35(3) of the ZVO-2 provides that a producer may, in principle, individually fulfil its extended producer responsibility obligations, unless the products that it places on the market in Slovenia are intended for household use. In addition, Article 37(3) and (4) of the ZVO-2 requires producers that are thus required to fulfil their extended producer responsibility obligations collectively to conclude, for that purpose, a contract with the single organisation. As is apparent from the order for reference, the refusal to conclude such a contract is punishable by a fine.

196 Such provisions are capable of coming within the scope of both the freedom of establishment and the freedom to provide services, depending on whether or not the economic operator concerned carries on its activities in Slovenia through a fixed establishment, within the meaning of the case-law referred to in paragraphs 167 and 168 of the present judgment.

197 As regards the question whether the compulsory use of a specific provider constitutes a restriction on the freedom to provide services, it should be borne in mind, first, that, as noted in paragraph 51 of the present judgment, Directive 2008/98 allows, in principle, producers of products subject to extended producer responsibility schemes to fulfil their obligations in that regard individually or collectively. Where a Member State opts for mandatory collective fulfilment in respect of a given category of products, the adjustments that the producers concerned must make in order to comply with such a requirement may entail additional administrative and financial burdens that are such as to render access to the Slovenian market less attractive. That is particularly the case in so far as the legislation concerned also applies to producers that provide services on the Slovenian market only occasionally and failure to comply carries a financial penalty.

198 Second, the Court has held that an obligation to contract imposed on economic operators established in another Member State may constitute a restriction on the freedom to provide services where it reduces the ability of the operators concerned to compete effectively with operators already present in that State (see, to that effect, judgment of 28 April 2009, *Commission* v *Italy*, C-518/06, EU:C:2009:270, paragraph 70). Thus, it is apparent from the case-law of the Court that a restriction on the freedom to provide services may result from national provisions that make the conditions for an operator to access the market concerned, and the conditions for that operator to exercise its economic activity, subject to the direct or indirect intervention of competing operators already present on the national market concerned, thereby potentially giving those operators competitive advantages (see, to that effect, judgments of 15 January 2002, *Commission* v *Italy*, C-439/99, EU:C:2002:14, paragraph 39, and of 1 July 2008, *MOTOE*, C-49/07, EU:C:2008:376, paragraphs 38 and 51).

199 In the present case, Article 38(10) of the ZVO-2 provides that the single organisation is to have a supervisory body for the extended producer responsibility scheme in question, which is composed of three representatives of the producers that hold shares in the organisation, three representatives of the producers that joined the already established organisation and a representative of the Ministry responsible for the environment. The powers available to that body under Article 38(11) of the ZVO-2 include, inter alia, the power to obtain access to certain information held by producers concerning products covered by extended producer responsibility and the power to choose, in accordance with the detailed rules laid down, the persons responsible for the collection and treatment of waste on behalf of the single organisation.

200 It therefore appears that the activity of the single organisation with which any producer wishing to enter the Slovenian market is required to contract is substantially determined by producers that are already present on the Slovenian market. In addition, as the Commission noted in its written observations, it is not ruled out that the representatives of those producers may carry out their mandate pursuing the economic interests of those producers and, in view of the powers enjoyed by that organisation, allow those producers to enjoy competitive advantages on account of their presence in it. Although it is indeed apparent from the order for reference that the producers represented in the supervisory body, the producers holding shares in that organisation and the producers not holding shares in that organisation are placed on an equal footing and have the same decision-making rights, the fact remains that all those producers are economic operators competing with producers wishing to gain access to the Slovenian market.

201 In those circumstances, the compulsory use of a specific provider is liable to render less attractive, for nationals of other Member States, the exercise of the freedom to provide services in the Member State which imposes such an obligation, and thus constitutes a restriction on the freedom to provide services guaranteed by Article 56 TFEU. For similar reasons, the provisions referred to in paragraphs 197 to 199 of the present judgment are liable to make it less attractive for nationals of other Member States to establish themselves in the Member State concerned, with the result that they constitute a restriction on the freedom of establishment guaranteed by Article 49 TFEU.

(b) Justification for the restrictions in question

202 In accordance with the case-law cited in paragraphs 98 to 110 of the present judgment, it is necessary to ascertain whether those restrictions may nevertheless be justified.

(1) Whether there are overriding reasons in the public interest

203 As is apparent from the order for reference, the obligation imposed on producers wishing to enter the Slovenian market to contract with the single organisation for the purposes of the collective fulfilment of extended producer responsibility obligations is intended to strengthen the organisational responsibility of producers within the extended producer responsibility scheme at issue in the main proceedings and, therefore, the effectiveness of the system for managing waste from products covered by that scheme in Slovenia. That purpose pursues the objectives of protecting the environment and public health, which constitute, as is apparent from paragraphs 120 to 122 of the present judgment, overriding reasons in the public interest capable of justifying restrictions on the freedom to provide services.

(2) The condition of proportionality

(i) The suitability of the restrictions for securing the attainment of the objectives pursued

204 As regards whether a measure providing for the mandatory use of a single provider for the purposes of the collective fulfilment of extended producer responsibility obligations is suitable for achieving the objectives of protection of the environment and public health pursued by the ZVO-2, both the mandatory nature of that recourse to a single provider and the obligation on producers of products subject to that extended responsibility to contract with an organisation that has an exclusive right to carry out that activity appear to satisfy that requirement.

205 First, there is nothing in the documents before the Court to suggest that the collective fulfilment of extended producer responsibility obligations could entail disadvantages as compared to the individual fulfilment of those obligations, in particular as regards waste streams. On the contrary, as the Netherlands Government submitted in its written observations, the obligation on producers of products intended for household use to fulfil their obligations collectively through a single organisation may contribute to preventing or at least reducing certain abusive behaviour on the part of producers of products subject to extended producer responsibility that could use the take-back, collection or recycling schemes put in place in the context of that collective fulfilment, but without paying the contributions provided for on the basis of the quantity and type of waste that they generate.

206 Second, as the Commission noted in its written observations, the obligation to contract imposed on producers subject to extended producer responsibility obligations forms part of a systematic and consistent approach in the context of the establishment of a monopoly over the collective fulfilment of extended producer responsibility obligations. In any event, as was argued by the Slovenian and Netherlands Governments during the proceedings before the Court, the introduction of a compulsory scheme for the collective fulfilment of extended producer responsibility obligations, conceived around a single organisation, is capable of facilitating the establishment of a well-functioning waste management system, in particular in small or medium-sized Member States.

(ii) Whether the restrictions concerned are strictly necessary and proportionate

207 As regards the question whether the objectives of protecting the environment and public health could be attained by less restrictive measures, it appears that, as is apparent from paragraphs 132 to 134 of the present judgment and provided that the national legislature genuinely wished to achieve a particularly high level of protection of the environment and public health, the mandatory use of a single provider for the purposes of the collective fulfilment of extended producer responsibility obligations may be regarded as necessary to achieve those objectives.

208 It is, in any event, for the referring court to ascertain that the Slovenian legislature did not have the possibility of adopting measures which, while equally effective in achieving the objectives pursued, would have been less restrictive, in particular in so far as the extended producer responsibility scheme at issue in the main proceedings also applies to producers that provide services on the Slovenian market only occasionally.

209 Moreover, as is apparent from paragraph 104 of the present judgment, the referring court must verify that the measures at issue in the main proceedings are not disproportionate to the objectives of protection of the environment and public health pursued. In that context, it may take into account, inter alia, the shortcomings which, as is apparent from the order for reference, characterised the extended producer responsibility scheme provided for by the ZVO-1.

(3) Compliance with Article 16 of the Charter

210 In accordance with the case-law referred to in paragraphs 105 to 110 of the present judgment, it is still necessary to ascertain whether the extended producer responsibility scheme at issue in the main proceedings is compatible with the fundamental rights guaranteed by the Charter – here, the freedom to conduct a business guaranteed by Article 16 of the Charter.

211 In that regard, first, according to the case-law of the Court, any measure liable to have a sufficiently direct and significant effect on the freedom of the operators concerned to exercise a trade or profession constitutes a restriction on the exercise of the freedom to conduct a business (see, to that effect, order of 23 September 2004, *Springer*, C-435/02 and C-103/03, EU:C:2004:552, paragraph 49).

212 Second, the Court has held that the protection afforded by Article 16 of the Charter also includes, by virtue of freedom of contract, the freedom to choose with whom to do business (see, to that effect, judgments of 22 January 2013, *Sky Österreich*, C-283/11, EU:C:2013:28, paragraph 43 and the case-law cited, and of 12 January 2023, *TP (Audiovisual editor for public television)*, C-356/21, EU:C:2023:9, paragraph 74), and that the imposition of an obligation to contract constitutes a substantial limitation on the freedom of contract enjoyed, in principle, by economic operators (see, to that effect, judgment of 28 April 2009, *Commission* v *Italy*, C-518/06, EU:C:2009:270, paragraph 66).

213 In the present case, both the obligation on producers of products for household use to fulfil their obligations collectively and the obligation imposed on those producers to contract with the single organisation are liable, in so far as they constitute restrictions on the freedom to provide services and the freedom of establishment, to have a sufficiently direct and significant effect on the freedom of those producers to pursue their trade or business, with the result that they constitute limitations on the exercise of their freedom to conduct a business guaranteed in Article 16 of the Charter. As noted in paragraph 108 of this judgment, such limitations may, however, be justified.

214 As regards the justification for the compulsory nature of the collective fulfilment of the extended producer responsibility obligations in respect of waste from products intended for household use and the obligation to contract imposed on producers of such products, first, it is common ground that those obligations are provided for by the extended producer responsibility scheme at issue in the main proceedings.

215 Second, those limitations on the freedom to conduct a business respect the essence of the freedom guaranteed in Article 16 of the Charter. Indeed, the requirements thus imposed do not prevent all business activity as such, but constitute measures regulating the professional or commercial activities of the operators concerned, the conditions of which must, as follows from paragraph 141 of the present judgment, be assessed in the context of the examination of their proportionality.

216 Third, those same limitations are intended, as stated in paragraph 120 of the present judgment, to ensure a well-functioning waste management system and, therefore, the attainment of the objectives of protection of the environment and public health, accordingly they actually meet objectives of general interest recognised by the European Union.

217 As regards, fourth, observance of the principle of proportionality, it follows from paragraphs 204 to 206 of the present judgment that the extended producer responsibility scheme at issue in the main proceedings appears, in itself, to be appropriate for attaining the objectives pursued and also necessary for that purpose. However, it may be inferred from the case-law of the Court that observance of freedom of contract also requires that any legislative or regulatory intervention by a Member State in an economic operator's contractual relations with other economic operators be devised in such a way as to minimise its impact on the economic operator's interests (see, to that effect, judgment of 18 July 2013, *Alemo-Herron and Others*, C-426/11, EU:C:2013:521, paragraphs 34 and 35).

218 Similarly, it follows from the case-law of the European Court of Human Rights that, where the freedom of contract is restricted by extensive legislative means, such restrictions must be accompanied by consistent procedural safeguards to prevent any excessive burden being placed on the persons concerned and to ensure that the operation of the system and its impact on the rights of those persons are neither arbitrary nor unforeseeable (see, to that effect, ECtHR, 19 June 2006, *Hutten-Czapska v. Poland*, CE:ECHR:2006:0619JUD003501497, §§ 167 and 168; ECtHR, 14 October 2008, *Maria Dumitrescu and Sorin Mugur Dumitrescu v. Romania*, CE:ECHR:2008:1014JUD000729302, §§ 47 and 54; and ECtHR, 28 January 2014, *Bittó and Others v. Slovakia*, CE:ECHR:2014:0128JUD003025509, § 98).

219 It follows that, where a Member State imposes on producers of products subject to extended producer responsibility the mandatory use of a single organisation for the purposes of collective fulfilment of their obligations in that regard, it is for that Member State to ensure that that obligation is accompanied by sufficient procedural safeguards, in particular as regards possible conflicts of interests or competitive disadvantages, in order to prevent any excessive burden being placed on the producers concerned in the course of carrying out their economic activity as a result of arbitrary or unforeseeable effects on their contractual relationships. In so far as national legislation such as that at issue in the main proceedings must be framed in such a way as to minimise its impact on the interests of the economic operators concerned, the referring court will also have to ascertain, as is apparent from paragraph 109 of the present judgment, that the importance of the objectives of general interest pursued by that limitation is proportionate to the seriousness of the interference entailed by that limitation.

220 In those circumstances, it must be held that, subject to compliance with the principle of proportionality, Articles 8 and 8a of Directive 2008/98, Article 56 TFEU and Article 16 of the Charter do not preclude national legislation which makes the collective fulfilment of extended producer responsibility obligations compulsory for the producers of products subject to that extended producer responsibility and requires them to contract with an organisation that has an exclusive right to carry out that activity, provided, however, that such obligations are accompanied by sufficient procedural safeguards, in particular with regard to possible conflicts of interest or competitive disadvantages, in order to prevent any excessive burden being placed on the producers concerned in the course of carrying out their economic activity as a result of arbitrary or unforeseeable effects on their contractual relationships.

5. The impact of the existence of a service of general economic interest on the compatibility with EU law of restrictions on freedom of establishment and freedom to provide services

221 If the referring court should consider, first, that, in the light of the answer given to the first question referred for a preliminary ruling, the collective fulfilment of extended producer responsibility obligations must be classified as a service of general economic interest, within the meaning of Article 15(4) of Directive 2006/123 and Article 106(2) TFEU, and, second, that one or more provisions of the extended producer responsibility scheme at issue in the main proceedings do not comply either with Article 15(1) to (3) of that directive or with Articles 49 and/or 56 TFEU, as interpreted, where appropriate, in the light of the rights and freedoms set out in Articles 16 and 17 of the Charter and the principles of legal certainty and the protection of legitimate expectations, it will be for the referring court next to ascertain whether those restrictions may be justified under Article 15(4) of Directive 2006/123 or Article 106(2) TFEU.

222 First, Article 15(4) of Directive 2006/123 provides that paragraphs 1 to 3 of that article are to apply to legislation in the field of services of general economic interest only to the extent that their application does not obstruct the performance, in law and in fact, of the particular task assigned to the undertaking in question. That article does not preclude national legislation imposing a requirement, within the meaning of paragraph 2 thereof, which does not satisfy the conditions of non-discrimination, necessity and proportionality laid down in paragraph 3 thereof, provided that that requirement is necessary for the performance, under economically viable conditions, of the particular public service task in question (see, to that effect, judgments of 23 December 2015, *Hiebler*, C-293/14, EU:C:2015:843, paragraph 73, and of 7 November 2018, *Commission* v *Hungary*, C-171/17, EU:C:2018:881, paragraph 85).

223 Second, Article 106(2) TFEU, read in conjunction with paragraph 1 of that article, may be relied on to justify the grant by a Member State, to an undertaking entrusted with the operation of a service of general economic interest, of special or exclusive rights which are contrary to the rules contained in the Treaties, to the extent to which performance of the particular task assigned to that undertaking can be assured only by the grant of such rights and provided that the development of trade is not affected to an extent contrary to the interests of the European Union (see, to that effect, judgments of 23 May 2000, *Sydhavnens Sten & Grus*, C-209/98, EU:C:2000:279, paragraph 74; of 18 December 2007, *Asociación Profesional de Empresas de Reparto y Manipulado de Correspondencia*, C-220/06, EU:C:2007:815, paragraph 78; and of 1 October 2009, *Woningstichting Sint Servatius*, C-567/07, EU:C:2009:593, paragraph 44).

224 As it itself stated, it will be for the referring court to ascertain whether the conditions referred to in paragraphs 222 and 223 of the present judgment are satisfied, it being understood that, in order for obligations imposed on an undertaking entrusted with the operation of a service of general economic interest to be regarded as coming within the remit of the particular tasks entrusted to it, they must be linked to the subject matter of the service of general economic interest in question and designed to make a direct contribution to satisfying that interest (see, to that effect, judgment of 23 October 1997, *Commission* v *France*, C-159/94, EU:C:1997:501, paragraph 68).

225 It is, in any event, for the national authorities relying on the existence of a service of general economic interest to set out in detail the reasons why the absence of a restriction on the freedom of establishment or the freedom to provide services would obstruct the performance, in law or in fact, of a particular public service task entrusted to the undertaking concerned (see, to that effect, judgments of 13 May 2003, *Commission* v *Spain*, C-463/00, EU:C:2003:272, paragraph 82, and of 8 June 2023, *Prestige and Limousine*, C-50/21, EU:C:2023:448, paragraph 75). That requirement should not, however, go so far as to require those authorities to prove, positively, that no other conceivable measure could enable that task to be performed under the same conditions (see, to that effect, judgment of 23 October 1997, *Commission* v *Netherlands*, C-157/94, EU:C:1997:499, paragraph 58).

226 In the light of all the foregoing considerations, the answer to the second to tenth questions referred is that Articles 8 and 8a of Directive 2008/98, Article 15 of Directive 2006/123, Articles 49, 56 and 106 TFEU, Articles 16 and 17 of the Charter and the principles of legal certainty and the protection of legitimate expectations must be interpreted as meaning that, subject to compliance with the principle of proportionality, they do not preclude national legislation which:

– establishes a monopoly situation through the creation of an organisation entrusted with the collective fulfilment of extended producer responsibility obligations that has the exclusive

right to carry out that activity for a given category of products, while providing for both the revocation by operation of law of the authorisations which enabled economic operators to carry on that activity up until that point and the termination by operation of law of all the contracts concluded by those operators in the exercise of the same activity, provided, however, first, that that legislation is accompanied by the establishment of a legislative framework capable of ensuring that the holder of that monopoly will in fact be able to pursue, in a consistent and systematic manner, the objectives of protection of the environment and public health which the Member State concerned has set itself by means of a supply that is quantitatively measured and qualitatively planned by reference to those objectives and subject to strict control by the public authorities, and, second, that it provides for adaptations to the application of the new rules to prevent any excessive burden being placed on the economic operators concerned, in particular a transitional period of sufficient duration to enable them to adapt to the changes or a system of reasonable compensation for the damage suffered by them;

– requires that organisation to carry on its activity on a non-profit-making basis;

– provides that producers subject to extended producer responsibility obligations that place on the market at least 51% of the total quantity of products of the same category, to which that extended responsibility obligation applies, must set up such an organisation and hold shares in it;

– provides that shareholders in that organisation must be producers on the market concerned;

– prohibits those producers from carrying out the activity of waste collection and treatment and prohibits capital or family ties between, on the one hand, that organisation, the members of its management body and those producers and, on the other hand, the persons who collect and treat waste and persons who have voting rights in the governing body or supervisory body of that organisation;

– makes the collective fulfilment of extended producer responsibility obligations compulsory for the producers of products subject to that extended producer responsibility and requires them to contract with that same organisation, provided, however, that such obligations are accompanied by sufficient procedural safeguards, in particular with regard to possible conflicts of interest or competitive disadvantages, in order to prevent any excessive burden being placed on the producers concerned in the course of carrying out their economic activity as a result of arbitrary or unforeseeable effects on their contractual relationships.

IV. Costs

227 Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the referring 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:

1. **Article 106(2) TFEU**

   must be interpreted as meaning that a legal person that, first, has the exclusive right to exercise, in accordance with Articles 8 and 8a of Directive 2008/98/EC of the European Parliament and of the Council of 19 November 2008 on waste and repealing certain Directives, as amended by Directive (EU) 2018/851 of the European Parliament and of the Council of 30 May 2018, an activity consisting of the fulfilment, for a given category of products and throughout the territory of a Member State, of extended producer responsibility obligations on behalf of the producers concerned, and that, second, is required to carry out that activity on a non-profit-making basis, must be regarded as an undertaking entrusted with the operation of a service of general economic interest, within the meaning of that Article 106(2), provided that that legal person has actually been entrusted with the discharge of public service obligations and that the nature, duration and scope of those obligations are clearly defined in national law.

2. **Articles 8 and 8a of Directive 2008/98, as amended by Directive 2018/851, Article 15 of Directive 2006/123/EC of the European Parliament and of the Council of 12 December 2006 on services in the internal market, Articles 49, 56 and 106 TFEU, Articles 16 and 17 of the Charter of Fundamental Rights of the European Union and the principles of legal certainty and protection of legitimate expectations**

   must be interpreted as meaning that, subject to compliance with the principle of proportionality, they do not preclude national legislation which:

   – **establishes a monopoly situation through the creation of an organisation entrusted with the collective fulfilment of extended producer responsibility obligations that has the exclusive right to carry out that activity for a given category of products, while providing for both the revocation by operation of law of the authorisations which enabled economic operators to carry on that activity up until that point and the termination by operation of law of all the contracts concluded by those operators in the exercise of the same activity, provided, however, first, that that legislation is accompanied by the establishment of a legislative framework capable of ensuring that the holder of that monopoly will in fact be able to pursue, in a consistent and systematic manner, the objectives of protection of the environment and public health which the Member State concerned has set itself by means of a supply that is quantitatively measured and qualitatively planned by reference to those objectives and subject to strict control by the public authorities, and, second, that it provides for adaptations to the application of the new rules to prevent any excessive burden being placed on the economic operators concerned, in particular a transitional period of sufficient duration to enable them to adapt to the changes or a system of reasonable compensation for the damage suffered by them;**

   – **requires that organisation to carry on its activity on a non-profit-making basis;**

   – **provides that producers subject to extended producer responsibility obligations that place on the market at least 51% of the total quantity of products of the same category, to which that extended responsibility obligation applies, must set up such an organisation and hold shares in it;**

– **provides that shareholders in that organisation must be producers on the market concerned;**

– **prohibits those producers from carrying out the activity of waste collection and treatment and prohibits capital or family ties between, on the one hand, that organisation, the members of its management body and those producers and, on the other hand, the persons who collect and treat waste and persons who have voting rights in the governing body or supervisory body of that organisation;**

– **makes the collective fulfilment of extended producer responsibility obligations compulsory for the producers of products subject to that extended producer responsibility and requires them to contract with that same organisation, provided, however, that such obligations are accompanied by sufficient procedural safeguards, in particular with regard to possible conflicts of interest or competitive disadvantages, in order to prevent any excessive burden being placed on the producers concerned in the course of carrying out their economic activity as a result of arbitrary or unforeseeable effects on their contractual relationships.**

[Signatures]