STATEMENT

ON THE LEGAL OPINION BY PROFESSOR ROBERTO MASTROIANNI

“LEGAL OPINION ON THE COMPATIBILITY WITH PRIMARY EUROPEAN UNION LAW OF THE EUROPEAN COMMISSION’S PROPOSAL FOR A REGULATION OF 21 JANUARY 2026, ESTABLISHING A REGULATORY FRAMEWORK FOR THE TRANSITION FROM COPPER NETWORKS TO FIBRE-TO-THE-HOME (FTTH) NETWORKS”

dated 13 May 2026

prepared on behalf of

BREKO – BUNDESVERBANDS BREITBANDKOMMUNIKATION E. V.

by

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As a supplement to the author’s legal opinion

“THE UNION-LAW AND CONSTITUTIONAL FRAMEWORK FOR A NON-DISCRIMINATORY AND RULE-BASED SWITCH-OFF OF COPPER NETWORKS” dated 5 March 2026

This document is an English translation of the statement originally drafted in German. In case of discrepancies, the German original shall prevail.

Regensburg, 27 July 2026

A. Outline

B. Executive summary

I. With regard to the compatibility of the rule-based switch-off procedure set out in Articles 53 to 61 of the DNA proposal (COM(2026) 16 final) with primary Union law, all (potential) infringements identified in the legal opinion prepared on behalf of Connect Europe by former General Court judge Prof. Roberto Mastroianni must be rejected.

II. As already set out in detail in the author's legal opinion of March 2026, there is no basis for assuming that the planned secondary-law provisions infringe the right to property under Article 17 CFR. The judgments cited by Mastroianni cannot justify the strict standard of review on which he bases his argument; they restrict the scope of the Union legislature's discretion in matters of economic policy in a manner inconsistent with the case-law of the Court of Justice of the European Union, and the subsequent legal analysis overlooks the extensive countervailing public-interest considerations that would justify the interference. In particular, on the basis of the case-law there is also no (de facto) expropriation giving rise to a duty to pay compensation.

III. For the same reasons, there is likewise no breach of the freedom to conduct a business under Article 16 CFR.

IV. The infringement of Article 345 TFEU alleged by Mastroianni in relation to the rule-based switch-off procedure is, in light of the detailed analysis set out in the author's earlier comprehensive opinion, particularly remote. In seeking to derive a restriction on the Union legislature from Article 345 TFEU, Mastroianni relies on two judgments which do not address that provision and on one judgment which concerns not the Union legislature but the national legislature. In fact, there are no judgments of the Court of Justice of the European Union from which the alleged significant restriction of the Union legislature's discretion in the field of economic-policy legislation could be inferred.

V. Contrary to Mastroianni's view, neither an infringement of the principle of conferral under Article 5(1), first sentence, and (2) TEU on account of the alleged absence of the conditions for internal market competence under Article 114 TFEU, nor an infringement of the European Commission's duty to state reasons under Article 296 TFEU, is apparent. Here too, Mastroianni proceeds on the basis of an extremely strict standard for reviewing the relevant legal requirements which simply does not reflect the case-law of the Court of Justice of the European Union, whose case-law likewise grants the Union legislature a significant margin of discretion in this respect.

VI. Consequently, and contrary to Mastroianni's view, no breach of the principles of subsidiarity and competence-related proportionality under Article 5(1), second sentence, (3) and (4) TEU can be established in the present case.

VII. Contrary to Mastroianni's view, there is likewise no breach of the objective of consumer protection under Article 38 CFR, since consumer policy concerns are to be taken into account comprehensively in the context of the switch-off procedure; see, for example, Articles 57(1)(b) and 59 of the DNA proposal (COM(2026) 16 final).

C. Facts of the case

On 21 January 2026, the European Commission presented its proposal for a Regulation on a Digital Networks Act (hereinafter: DNA proposal).[1] The proposal provides in Articles 53 to 61 DNA proposal for the introduction of a procedure for the switch-off of copper networks based on objective criteria (rule-based switch-off procedure).

A legal analysis of the compatibility of the rule-based switch-off procedure with Union law and constitutional law was carried out in March 2026 in a legal opinion prepared by the present author on behalf of BREKO Bundesverband Breitbandkommunikation e. V. (hereinafter: BREKO).[2] That legal opinion concluded, inter alia, that the rule-based switch-off procedure as laid down in Articles 53 to 61 DNA proposal is compatible, in terms of Union law, with Article 345 TFEU and Articles 17 and 16 CFR.[3]

Subsequently, a legal opinion by former Judge of the General Court Professor Roberto Mastroianni, prepared in May 2026 on behalf of Connect Europe, was published.[4] In that legal opinion, Mastroianni likewise examines the compatibility of Articles 53 to 61 DNA proposal with primary Union law and expresses serious doubts in that regard. It remains unclear whether Mastroianni merely identifies risks or also assumes actual breaches. Overall, he evidently proceeds on the basis of a "potential incompatibility with primary European Union Law" (para. 64), thus apparently assuming only a possible incompatibility with Union law. On the substantive level, he identifies, in particular, risks in the form of a disproportionate interference with Article 345 TFEU (para. 25), an insufficient justification of the interference with the freedom to conduct a business of copper network operators under Article 16 CFR (paras 43 et seq.) and a breach of their right to property under Article 17 CFR (para. 54). On the formal level, Mastroianni takes the view that the limits of the internal market competence under Article 114 TFEU have

[1] *European Commission,* Proposal for a Regulation of the European Parliament and of the Council on digital networks, amending Regulation (EU) 2015/2120, Directive 2002/58/EC and Decision No 676/2002/EC and repealing Regulation (EU) 2018/1971, Directive (EU) 2018/1972 and Decision No 243/2012/EU (Digital Networks Act), COM(2026) 16 final.

[2] *Kühling,* The Union-law and constitutional framework for a non-discriminatory and rule-based switch-off of copper networks, legal opinion prepared on behalf of BREKO Bundesverband Breitbandkommunikation e. V. in collaboration with Charlotte Gastroph, 5 March 2026, available (in German) at: https://brekoverband.de/wp-content/uploads/2026/03/Rechtsgutachten-Prof.-Dr.-Kuehling-Verfassungs-und-europarechtlicher-Rahmen-fuer-einen-diskriminierungsfreien-und-regelbasierten-Uebergang-von-Kupfer-auf-Glasfaser.pdf (last accessed 27 July 2026).

[3] *Kühling,* supra note 2, section D. I.

[4] *Mastroianni,* Legal Opinion on the compatibility with primary European Union law of the European Commission's Proposal for a Regulation of 21 January 2026, establishing a regulatory framework for the transition from copper networks to fibre-to-the-home (FTTH) networks, 13 May 2026, prepared on behalf of Connect Europe, available at: https://connecteurope.org/sites/default/files/2026-05/Legal%20opinion%20Copper%20Switch-off_Prof.%20Mastroianni_ForConnectEurope.pdf (last accessed 27 July 2026).

probably been exceeded and that, therefore, a breach of the principle of conferral under Article 5(1), first sentence, and (2) TEU is imminent (para. 25), that the requirements of the principle of subsidiarity under Article 5(1), second sentence, and (3) TEU are not met (para. 31), and that a breach of the principle of competence-related proportionality under Article 5(1), second sentence, and (4) TEU may be assumed (paras 32 et seq.).

The publication of Mastroianni's legal opinion prompted the present statement, prepared on behalf of BREKO, which supplements the above-mentioned legal opinion by the present author from March 2026.

D. Terms of reference and legal issues

On the basis of the facts of the case set out above, Mastroianni’s legal objections are to be examined as to their persuasive force, giving rise to the following legal questions:

I. Does Mastroianni’s legal assessment, in relation to the standards of review already examined in the author’s legal opinion of March 2026, namely Articles 17 and 16 CFR and Article 345 TFEU, lead to a different evaluation?
II. Is the rule-based switch-off procedure, moreover, compatible with further provisions and, in particular, with Article 5 TEU, Article 114 TFEU and principles of Union law?

E. Legal assessment

First, it must be examined whether Professor Mastroianni's legal assessment, in relation to the standards of review already addressed, calls for a different evaluation (see I.). Thereafter, in particular those provisions on which Mastroianni bases an alleged formal incompatibility of the DNA proposal are to be examined (see II.).

I. Compatibility of the rule-based switch off procedure pursuant to Articles 53 to 61 of the DNA proposal (COM(2026) 16 final) with the standards of review already examined in the author's legal opinion

The issues to be examined concern the right to property of copper network operators under Article 17 CFR (see 1.), their freedom to conduct a business under Article 16 CFR (see 2.) and Article 345 TFEU (see 3.)

1. Compatibility with the right to property under Article 17 CFR

As regards the compatibility of the rule-based switch-off procedure with the right to property of copper network operators under Article 17 CFR, the decisive issue is what type of restriction the switch-off procedure in question constitutes.[5] In this respect, Mastroianni states in paragraph 54 of his legal opinion: "[…] the measure deprives operators of the economic enjoyment of lawfully acquired assets and produces effects equivalent, in substance, to those of an expropriation, irrespective of the formal classification adopted by the Proposal."

To begin with, Mastroianni is to be agreed with in so far as the rule-based switch-off procedure cannot be regarded as a formal expropriation within the meaning of Article 17(1), second sentence, CFR, which presupposes a permanent loss of the property position.[6] Furthermore, Mastroianni assumes that the restriction in the form of the rule-based switch-off procedure under Articles 53 to 61 DNA proposal amounts to a de facto expropriation. According to the case law of the ECtHR, which can be transposed to Article 17 CFR by virtue of Article 52(3) CFR, such a de facto expropriation exists where the property position formally remaining in place is completely emptied of substance by the restriction on use.[7] The assumption of a de facto

[5] See, in abstract terms, on the different forms of restriction, *Kühling,* fn. 2, D. I. 1. (b) (aa) and (bb).
[6] See ECtHR, judgment of 8 January 2007, application no. 55809/00 (Berger v Germany), para. 56.
[7] See ECtHR, judgment of 23 October 2006, application no. 55878/00 (Weber v Germany), BeckRS 2006, 142428, paras 42 et seq.; conversely, apparently also ECJ, judgment of 12 May 2005, Case C-347/03 (ERSA v Ministero delle Politiche Agricole e Forestali), ECR I-3820, para. 122, holding that there is no deprivation through a prohibition, since "not every economically meaningful form of marketing" is excluded.

expropriation by Mastroianni thus excludes the existence of a control of use within the meaning of Article 17(1), third sentence, CFR.

Admittedly, Mastroianni is also to be agreed with to the extent that the economic possibility of using copper networks as assets is significantly limited by the obligation to switch them off. However – as the author's legal opinion of March 2026 sets out in detail[8] – the switch-off procedure is in fact designed by legislation in such a way that the copper network does not entirely lose its value as property. In particular, account must be taken of the transitional periods, under which the initiation of the switch-off process or the order to switch off is, in principle, to take place no earlier than 30 December 2035, subject to specified conditions (see Article 54 DNA proposal), so that, ultimately, the restriction amounts merely to a shortening of the period of use. Moreover, as will also be relevant in the context of justification, reference may be made to the fact that parts of the copper network can continue to be used in the context of operating a fibre network.[9] Even though many details are unclear or disputed and depend on the specific circumstances of the investments made to date[10], this applies at least in part, for example, to empty ducts which – because of the civil-engineering works involved – represent a significant cost factor and thus a central asset of the copper network. In principle, the copper network operator will save further civil-engineering costs through the continued use of empty ducts for fibre cables or for fibre cables already laid in those ducts, particularly in the area of main cables. Depending on the operator, similar considerations apply, to a relevant extent, to building connections in so far as these are implemented via empty ducts, to manholes and cable-pulling shafts, to operational buildings and exchange stations as sites, to multifunctional enclosures/cable distribution boxes, as well as to rights of way and rights to use land. Mastroianni simply disregards these aspects. Accordingly, contrary to Mastroianni's view, no de facto expropriation, but rather a control of use is to be assumed.

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[8] *Kühling,* fn. 2, D. I. 1. (b) (cc).

[9] *Kühling,* fn. 2, D. I. 1. (c) (bb) (6) and (7).

[10] See, for example, *Schwarz-Schilling/Sörries/Plückebaum/Baischew/Ockenfels/Zoz/Neumann*, Double roll-out of fibre-optic networks. Economic analysis and legal assessment, WIK-Consult report, October 2023, available (in German) at: https://www.wik.org/veroeffentlichungen/veroeffentlichung/doppelausbau-von-glasfasernetzen-oekonomische-analyse-und-rechtliche-einordnung (last accessed 27 July 2026), p. 5; see also *Neumann/Plückebaum/Strube Martins/Schwarz-Schilling*, Transition from copper to fibre-optic networks: interests, areas of tension and possible overlaps, WIK-Consult report, October 2021, available (in German) at: https://www.bundesnetzagentur.de/SharedDocs/Downloads/DE/Sachgebiete/Telekommunikation/Breitband/Gigabitforum/WIK-Studie_Uebergang_Kupfer_Glasfaser.pdf?__blob=publicationFile&v=4 (last accessed 27 July 2026), p. 46; see further *Plückebaum/Ockenfels*, Costs and other obstacles to the migration from copper to fibre-optic networks, WIK discussion paper No. 457, February 2020, available (in German) at: https://www.wik.org/fileadmin/user_upload/Unternehmen/Veroeffentlichungen/Diskus/2022/WIK_Diskussionsbeitrag_Nr_457.pdf (last accessed 27 July 2026), pp. 24, 27, 29, 33 and 38.

Despite the high intensity of the interference[11], which is to be assumed because the possibility of using the copper network for telecommunications purposes is being phased out,[12] the switch-off procedure can nevertheless be regarded as proportionate within the meaning of Article 52(1), second sentence, CFR, for a variety of reasons which Mastroianni does not elaborate on. First, the impact of the interference is mitigated by the fact that the copper network concerned is essentially a network that has already been written off and has, moreover, to a large extent been co-financed by competitors through the payment of wholesale charges. This also applies to subsequent upgrading measures – in Germany, for example, through vectoring investments. Depending on the fee structure, copper network operators have also financed replacement costs as part of the payment of wholesale charges, thereby co-financing the fibre roll-out by the copper network operator.[13] Secondly, account must be taken of the far-reaching importance of the objectives pursued and of the transitional periods, as well as of a host of additional public-interest considerations which Mastroianni does not take into account, so that the rule-based switch-off procedure is justified as an interference relevant to fundamental rights.[14] By way of example, in addition to telecommunications-specific objectives – in particular the acceleration of the roll-out of fibre networks – mention should be made of the promotion of competition. Moreover, other public-interest objectives, such as environmental effects and the aspect of sustainability, must be taken into consideration. In this respect, the operation of fibre networks has a positive effect, as their operation consumes significantly less electricity than that of copper networks.[15]

Nor can there be any question of a violation of the essence of the right (Article 52(1), first sentence, second half-sentence, CFR) of Article 17(1) CFR, the infringement of which

[11] ECtHR, judgment of 13 January 2015, application no. 65681/13 (Vékony v Hungary), BeckRS 2015, 131946, para. 35; *Jarass*, in: Jarass (ed.), Charter of Fundamental Rights of the EU, 4th ed. 2021, Article 17 CFR, para. 37; *Kühling*, fn. 2, D. I. 1. (c) (bb) (6).
[12] *Kühling,* fn. 2, D. I. 1. (c) (bb) (6).
[13] *Kühling*, fn. 2, D. I. 1. (c) (bb) (7). On this context, and critically regarding the high revenues of Deutsche Telekom AG resulting from charge regulation, see already *K.-H. Neumann/Vogelsang*, N&R Supplement 1/2016, 1 (pp. 19 et seq.).
[14] See, for a detailed examination of the proportionality of the rule-based switch-off procedure, *Kühling*, fn. 2, D. I. 1. (c); see also General Court, judgment of 23 October 2003, Case T-65/98 (Van den Bergh Foods Ltd v Commission of the European Communities), ECR II-4653, para. 171; *Jarass*, in: Jarass (ed.), Charter of Fundamental Rights of the EU, 4th ed. 2021, Article 17 CFR, para. 37.
[15] *Federal Network Agency,* Regulatory concept for the copper-to-fibre migration, January 2026, available (in German) at: https://www.bundesnetzagentur.de/DE/Fachthemen/Telekommunikation/Kupfer-Glas/DL/Regulierungskonzept.pdf?_blob=publicationFile&v=2 (last accessed 27 July 2026), para. 32. The FTTH standard of roll-out is particularly emission-efficient, whereas in particular technologies involving a copper segment are less emission-efficient; see *Zuloaga/Plückebaum/Kulenkampff/Ockenfels,* Ecological effects of fibre roll-out, WIK-Consult report, November 2024, available (in German) at: https://www.rtr.at/TKP/aktuelles/publikationen/publikationen/oekologische-effekte-des-glasfaserausbaus.de.html (last accessed 27 July 2026), p. 2.

presupposes a deprivation of property or of its free use[16] and the risk of which Mastroianni points to in paragraph 53, since, as just established, a range of possible uses remains. While Mastroianni, consistently with his approach, assumes a breach of Article 17 CFR (paragraph 54) on the ground that the compensatory regulation required by Article 17(1), second sentence, CFR is not provided for by Articles 53 to 61 DNA proposal, it should be noted that Article 17(1), third sentence, CFR does not provide for any obligation to pay compensation. It is true that a disproportionate control of use might be rendered proportionate by means of a compensation payment; however, in the present case this question can be left open in the light of the proportionality of the switch-off procedure already established. [17]

In the light of Mastroianni's legal assessment, there is thus no evaluation of the rule-based switch-off procedure, as regards the right to property, which differs from that set out in the legal opinion. Contrary to Mastroianni's analysis, no breach of Article 17 CFR by the planned secondary-law provisions is to be assumed, and the comprehensively reasoned assessment in the legal opinion of March 2026 is to be maintained. The judgments relied on by Mastroianni cannot justify the strict standard he applies; they restrict the legislature's discretion in economic-policy matters in a manner that does not reflect the case-law of the Court of Justice, and Mastroianni's subsequent application of the law ignores the extensive, countervailing public-interest considerations that justify the interference.

2. Compatibility with the freedom to conduct a business under Article 16 CFR

In principle, there is no need for an in-depth, separate examination of the freedom to conduct a business of copper network operators under Article 16 CFR, in so far as the review under Article 16 CFR largely mirrors that under Article 17 CFR (see 1. above) and therefore, in the present case, no different outcome can be reached.[18]

Nevertheless, Mastroianni's submissions on Article 16 CFR should briefly be addressed.

To begin with, he can be agreed with in so far as the rule-based switch-off procedure also significantly restricts the freedom to conduct a business of copper network operators, in that, in the long term, it effectively prohibits them from continuing a (specific) economic activity, namely the operation of copper networks (see paragraph 42). It is true that the obligation to switch off copper networks has a substantial impact on the entrepreneurial activity consisting

[16] ECJ, judgment of 6 December 1984, Case 59/83 (Biovilac), ECR 4057, para. 22
[17] See on this point *Kühling*, fn. 2, D. I. 2.
[18] See on this point *Kühling*, fn. 2, D. I. 3.

in the operation of networks (for example copper and fibre networks) and may require cost-intensive measures[19], such as the roll-out of fibre networks. Nonetheless, the measure at issue concerns only the operation of part of telecommunications networks. Moreover, an addressee of an obligation to switch off has, to a certain extent, the possibility of "determining the specific measures" [20], for example by defining the migration conditions in copper switch-off plans drawn up by operators pursuant to Article 60 of the DNA proposal.

Furthermore, in paragraphs 44 et seq. of his legal opinion, Mastroianni criticises various aspects, without, in each case, establishing any link to their specific relevance in the context of Article 16 CFR. Thus, in paragraph 44 he states: "[…] the Commission does not demonstrate the existence of a direct causal link between the persistence of copper networks and an obstacle to the availability or adoption of fibre." This can already be countered by noting that, in its impact assessment report, the European Commission has in particular identified the continued existence of copper networks as a "problem driver" and highlighted its relevance for the slow roll-out and low uptake of fibre networks.[21] This suffices to render plausible the countervailing interests protected, for the purposes of justifying the interference. From which judgments of the Court of Justice the strict requirement of proof of a direct causal link is supposed to follow remains unexplained in Mastroianni's line of argument. Rather, he evidently proceeds on the basis of a very strict standard, which severely restricts the economic-policy discretion of the Union legislature. However, that standard does not in fact follow from the case-law of the Court of Justice. [22]

A risk of an infringement of the essence of Article 16 CFR, which Mastroianni mentions in paragraph 47 of his legal opinion, is even less to be assumed in the present case. It is true that the essence ("contenu essentiel") is also determined by reference to the intensity of the interference. [23] In that regard consistently, Mastroianni bases the alleged risk of an infringement of the essence on the expropriatory character of the interference and the absence of a compensatory

[19] ECJ, judgment of 27 March 2014, Case C-314/12 (UPC Telekabel Wien), ECLI:EU:C:2014:192, para. 50.

[20] ECJ, judgment of 3 June 2016, Case C-134/15 (Lidl), ECLI:EU:C:2016:498, para. 29; judgment of 27 March 2014, Case C-314/12 (UPC Telekabel Wien), ECLI:EU:C:2014:192, para. 52.

[21] *European Commission*, Impact Assessment Report, 21 January 2026, SWD(2026) 13 final, Part 1/3, pp. 34 et seq.

[22] See rather, for example, ECJ, judgment of 17 December 2015, Case C-157/14 (Neptune), ECLI:EU:C:2015:823, para. 76; judgment of 12 July 2005, Joined Cases C-154/04 and C-155/04 (Alliance for Natural Health and Nutri-Link Ltd), ECR I-6451, para. 52; judgment of 10 December 2002, Case C-491/01 (British American Tobacco), ECR I-11453, para. 123; judgment of 17 October 1995, Case C-44/94 (Fishermen's Organizations and Others), ECR I-3115, para. 57.

[23] *Kühling/Drechsler,* in: Pechstein/Nowak/Häde (eds), Frankfurter Kommentar EUV/GRC/AEUV, Vol. 1, 2nd ed. 2023, Article 16 CFR, para. 20, with further references; see exemplarily ECJ, judgment of 8 February 2018, Case C-380/16 (Commission v Germany), ECLI:EU:C:2018:966, para. 67.

scheme (see paragraph 47). However, in the present case a control of use must be assumed (see 1. above), the entrepreneurial activity of network operation as such not being prevented, but merely the operation of copper networks being restricted on the time axis, possibly earlier than planned in business terms. A violation of the essence of Article 16 CFR is therefore, in the light of the reasoning set out in the legal opinion of March 2026 and in this submission, even more remote.

In the wake of Mastroianni's legal assessment, there is thus no evaluation of the rule-based switch-off procedure which deviates from that set out in the legal opinion. In the final analysis, no breach of Article 16 CFR by the planned secondary-law provisions is to be assumed.

3. Compatibility with Article 345 TFEU

From the provision on the domestic system of property ownership in Article 345 TFEU (Article 222 EEC/EC Treaty of Maastricht, Article 295 EC Treaty of Nice) it follows that, when exercising their powers, the Union institutions are required to leave the Member States' system of property ownership unaffected (reservation concerning the exercise of powers).[24]

In principle, reference is made to the author's submissions on Article 345 TFEU in the legal opinion. [25] What should be highlighted here in particular is that the Court of Justice's existing judgments on Article 345 TFEU have not yet revealed any limiting effect of that provision, [26] with the result that the Court of Justice greatly restricts the relevance of that provision. The permissibility of any rules interfering with the guarantee of property rights is consequently assessed by reference to the other Treaty provisions, in particular Article 17 CFR in substantive terms (see 1. above) and Article 5(1) TEU in terms of competence (see II.1 and 2 below). [27] Article 345 TFEU does not have any restrictive effect in this case.

Consistently in this regard, Mastroianni refers, in his legal opinion, in the context of Article 345 TFEU to Article 17 CFR (paragraph 24) and cites the judgments in Hauer and in Kadi and Al Barakaat. However, those judgments do not concern Article 345 TFEU, but the Union-law guarantee of property rights. [28] At the same time, Mastroianni nonetheless assumes a breach of

[24] *Kingreen,* inCalliess/Ruffert (eds), EUV/AEUV, 6th ed. 2022, Article 345 TFEU, para. 5; Kühling, fn. 2, D. I. 4. (a).
[25] *Kühling,* fn. 2, D. I. 4.
[26] See the further submissions on various judgments in the legal opinion, *Kühling*, fn. 2, D. I. 4. (b).
[27] *Kühling*, fn. 2, D. I. 4. (c).
[28] ECJ, judgment of 3 September 2008, Joined Cases C-402/05 P and C-415/05 P (Kadi and Al Barakaat International Foundation v Council of the European Union and Commission of the European Communities), ECR I-6351,

Article 345 TFEU by the secondary-law switch-off procedure (paragraph 25), deriving that breach from what he regards as an infringement of Article 17 CFR. A breach of Article 17 CFR must, however, be rejected (see 1. above), so that, first, Mastroianni's conclusion and, secondly, his doctrinally incorrect reasoning, which in particular does not reflect the Court of Justice's case-law, cannot be accepted.

The judgment in Essent, cited by Mastroianni in paragraph 22 of his legal opinion, does indeed deal with Article 345 TFEU. In that judgment, the Court of Justice regarded a national (!) prohibition on privatisation in the energy sector as covered by Article 345 TFEU, but at the same time held that the national provision had to be justified under Article 63 TFEU. [29] This underlines once again that the Court of Justice infers from Article 345 TFEU, in terms of competence, only recognition of the Member States' power to determine their system (or structure) of property ownership, but (as already stated) subjects individual rules, in substantive terms, fully to Union law. [30] Nor can any restrictive effect of Article 345 TFEU that is relevant in the present case be inferred from that judgment.

Contrary to Mastroianni's view, the rule-based switch-off procedure in Articles 53 to 61 of the DNA proposal therefore does not in any way infringe Article 345 TFEU. On the contrary, his legal opinion particularly clearly illustrates that his assertions lack support in the Court of Justice's case-law: in order to argue for a restriction of the Union legislature derived from Article 345 TFEU, he relies on two judgments that do not deal with Article 345 TFEU at all, and on one judgment that concerns not the Union legislature but the national legislature. The reason why Mastroianni is unable to cite, in its stead, any judgment of the Court of Justice from which a significant restriction of the Union legislature's room for manoeuvre in adopting economic-policy legislation on the basis of Article 345 TFEU could be derived is simple: there is no such case-law. As has been set out in detail elsewhere, [31] Article 345 TFEU ultimately remains cryptic, despite different attempts in the literature to interpret it, and has not led to any significant limitations, in particular of the Union legislature, in the exercise of its legislative

paras 354 et seq.; judgment of 13 December 1979, Case 44/79 (Liselotte Hauer v Land Rheinland-Pfalz), ECR 3727, paras 17 et seq. The Court has consistently derived such a Union-law fundamental right from the common constitutional traditions of the Member States and from Article 1 of Protocol No. 1 to the European Convention on Human Rights, *Kühling*, fn. 2, D. I. 4. (b).

[29] ECJ, judgment of 22 October 2013, Joined Cases C-105/12 to C-107/12 (State of the Netherlands v Essent NV and Others), ECLI:EU:C:2013:677, para. 48; *Kühling*, fn. 2, D. I. 4. (b).

[30] *Kühling*, fn. 2, D. I. 4. (b).

[31] *Kühling*, in: Streinz (ed.), EUV/AEUV, 3rd ed. 2018, Article 345 TFEU, para. 1.

powers. Accordingly, in the present case too, the assumption that Articles 53 to 61 of the DNA proposal infringe Article 345 TFEU is remote. [32]

II. Compatibility of the rule-based switch-off procedure with further provisions and principles

The following section briefly examines the compatibility of the rule-based switch-off procedure with further provisions, in particular Articles 5 TEU and 114 TFEU (see 1 and 2 below), as well as with the Union-law principles of consumer protection and non-discrimination (see 3 below), which the author did not yet address in the legal opinion of March 2026, since corresponding infringements are highly unlikely.

1. Principle of conferral under Article 5(1), first sentence, and (2) TEU in conjunction with the internal market competence under Article 114 TFEU

From a formal point of view, Mastroianni first alleges an infringement of the principle of conferral in Article 5(1), first sentence, and (2) TEU in conjunction with the internal market competence in Article 114 TFEU (Article 95 EC, Article 100a EC Treaty). In particular, in paragraph 14 of his legal opinion he states: "In the present case, serious doubts arise as to whether the mandatory switch-off of copper networks can legitimately be characterised as a harmonisation measure necessary of the functioning of the internal market, within the meaning of Article 114 TFEU."

Mastroianni proceeds on the basis that the conditions for recourse to the internal market competence in Article 114(1), second sentence, TFEU are not satisfied. Thus, he argues that the coexistence of copper and fibre networks does not create obstacles to the fundamental freedoms or any significant distortions of cross-border competition, but rather reflects the different stages of development of national infrastructures (paragraph 16). He also assumes an infringement of the European Commission's obligation to state reasons under Article 296 TFEU, which could be relied upon by way of an action for annulment under Article 263 TFEU and a request for a preliminary ruling under Article 267 TFEU (paragraph 15).

The question to be examined here is whether Mastroianni's view is to be followed, or whether an infringement of Article 5(1), first sentence, and (2) TEU in conjunction with Article 114 TFEU must be rejected.

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[32] For a detailed discussion, see *Kühling*, fn. 2, D. I. 4. (b) and (c).

Under Article 26(2) TFEU, the internal market comprises an area without internal frontiers in which the free movement of goods, persons, services and capital is ensured in accordance with the provisions of the Treaties. Any acts adopted on the basis of Article 114(1), second sentence, TFEU must "in fact have as their object the improvement of the conditions for the establishment and functioning of the internal market" [33]. The legal basis may be relied upon where there are existing differences between national rules, if those differences "are such as to obstruct the fundamental freedoms or to have a direct effect in that way on the functioning of the internal market, or to cause appreciable distortions of competition." [34] In addition, Article 114 TFEU may be used to "prevent the emergence of such obstacles to trade resulting from a divergent development of national laws. However, their emergence must be likely and the measure in question must be designed to prevent them." [35] In particular in fields characterised by complex technical features, the Union legislature enjoys wide discretion as regards the "measures for approximation" within the meaning of Article 114(1), second sentence, TFEU. [36] An unduly narrow interpretation of the conditions in Article 114 TFEU would, however, run counter to the broad interpretation adopted in the Court of Justice's case-law. [37]

In principle, the creation of an internal market for telecommunications is required, [38] but this has not yet been achieved. In the fixed-network sector, in particular as regards the stage of fibre-network roll-out, considerable differences are found between the Member States.[39] According to the Monopolies Commission, the internal market in the telecommunications sector therefore remains "an unfinished project" to this day.[40]

[33] ECJ, judgment of 5 October 2000, Case C-376/98 (Federal Republic of Germany v European Parliament and Council of the European Union), ECR I-8419, para. 84.
[34] ECJ, judgment of 8 June 2010, Case C-58/08 (Vodafone and Others), ECR I-4999, para. 32.
[35] ECJ, judgment of 8 June 2010, Case C-58/08 (Vodafone and Others), ECR I-4999, para. 33; judgment of 12 December 2006, Case C-380/03 (Federal Republic of Germany v European Parliament and Council of the European Union), ECR I-11573, para. 38; judgment of 9 October 2001, Case C-377/98 (Netherlands v Parliament and Council), ECR I-7079, para. 15; judgment of 13 July 1995, Case C-350/92 (Spain v Council), ECR I-1985, para. 35.
[36] ECJ, judgment of 8 June 2010, Case C-58/08 (Vodafone and Others), ECR I-4999, para. 35, with further references.
[37] See *Mast,* GRUR Int. 2024, 607 (609), who notes that there are only four judgments of the ECJ in which the conditions for recourse to the internal-market competence were found not to be satisfied. See also *Goldmann*, EuR 2026, 311 (323).
[38] See, for example, *Draghi*, The future of European competitiveness, Part B: In-depth analysis and recommendations, 9 September 2024, available at: https://commission.europa.eu/document/download/ec1409c1-d4b4-4882-8bdd-3519f86bbb92_en?filename=The%20future%20of%20European%20competitiveness_%20In-depth%20analysis%20and%20recommendations_0.pdf (last accessed 27 July 2026), p. 74; *Monopolies Commission,* Telekommunikation 2025: Mit Wettbewerb zum Binnenmarkt!, 14th sector report, available (in German) at: https://www.monopolkommission.de/publikationen/telekommunikation/sektorgutachten/telekommunikation-2025-mit-wettbewerb-zum-binnenmarkt#c2007 (last accessed 27 July 2026), paras 1 and 85.
[39] *Monopolies Commission*, fn. 38, para. 85.
[40] *Monopolies Commission*, fn. 38, para. 1.

While data traffic and demand for gigabit connectivity are increasing, [41] there are (despite the currently applicable EECC Directive) differing national regulatory approaches, which the European Commission regards as one of the main causes of the differences in fibre roll-out. [42] In the view of the high-level report on the future of the European internal market drawn up, at the request of the European Commission and the European Council, by former Italian Prime Minister Enrico Letta, this fragmentation impairs the cross-border activities of operators. Thus, Letta states in particular: "[…] the EU still includes, currently, 27 distinct national electronic communications markets. This enduring fragmentation hinders the scale and growth of pan-European operators, limiting their ability to invest, innovate, and compete with their global counterparts." [43] The national differences are therefore, first, capable of causing appreciable distortions of competition, for instance owing to different investment decisions, and, secondly, liable to impair the freedom of establishment under Articles 49 et seq. TFEU and the freedom to provide services under Articles 56 et seq. TFEU of network operators and other persons. The DNA proposal likewise notes this in recital 2 and therefore specifically seeks to "facilitate the development of a single market for electronic communications by introducing simplified and further harmonised measures", recital 17.

Since the creation of such an internal market was not achieved under the EECC, the choice of a harmonising regulation as the form of action can, for good reasons, be justified as necessary under Article 26(1) TFEU. The European Commission points this out in recital 4 of the DNA proposal.

Furthermore, Mastroianni argues that the planned rule-based switch-off procedure appears primarily to pursue structural and industrial-policy objectives, in particular the acceleration of fibre-network roll-out, and that other sector-specific provisions (in particular Article 173 TFEU), rather than Article 114 TFEU, should therefore be considered as the appropriate legal basis (paragraph 17). He can be agreed with in so far as Article 114 TFEU does not support measures which pursue political concepts of the public interest in the promotion of technology or infrastructure policy instead of market-based solutions in a competitive environment. [44] In the fields of infrastructure policy and consumer protection, Article 114 TFEU requires that, as a result of

[41] Recital 1 of the DNA proposal. For a more detailed discussion, see already *Fraunhofer Institute for Open Communication Systems (FOKUS)*, Netzinfrastrukturen für die Gigabitgesellschaft, 2016, available (in German) at: https://www.fokus.fraunhofer.de/de/newsroom/news/gigabit_studie.html (last accessed 27 July 2026).

[42] *European Commission*, Impact Assessment Report, 21 January 2026, SWD(2026) 13 final, Part 1/3, pp. 34 et seq.

[43] *Letta,* Much more than a market, April 2024, available at: https://www.consilium.europa.eu/media/ny3j24sm/much-more-than-a-market-report-by-enrico-letta.pdf (last accessed 27 July 2026), p. 52.

[44] *Gärditz,* in: Scheurle/Mayen (eds), Telekommunikationsgesetz, 3rd ed. 2018, Introduction II: Requirements under Union law, A. I., para. 6.

differing national policies, regulatory differences arise which create obstacles to the free movement of goods or services or distortions of competition. [45] However, such obstacles to the fundamental freedoms and possible distortions of competition have just been identified.

Contrary to Mastroianni's view, there is therefore neither an infringement of the principle of conferral on account of the conditions for recourse to the internal-market competence not being met, nor, in that respect, an infringement of the European Commission's obligation to state reasons under Article 296 TFEU. Here too, Mastroianni proceeds on the basis of an extremely strict standard for reviewing the relevant conditions, which simply does not reflect the Court of Justice's case-law, that case-law likewise allowing the Union legislature a significant margin of discretion. Thus, the Court of Justice has held that the statement of reasons "need not go into all the relevant factual and legal details". [46]

2. Principles of subsidiarity and competence-related proportionality under Article 5(1), second sentence, (3) and (4) TEU

The principle of subsidiarity in Article 5(1), second sentence, and (3) TEU is now undisputedly applicable to the internal-market competence under Article 114 TFEU (Article 95 EC). [47] However, in the specific legal assessment of the internal-market competence, that principle plays only a marginal role, since subsidiarity does not have an autonomous substantive content over and above the constituent requirements of Article 114 TFEU. [48] In any event, the Court of Justice has so far never struck down a Union act on the basis of the subsidiarity principle[49] and regards itself, "institutionally, merely as a subsequent guardian after the national parliaments."[50]

Nevertheless, Article 5(3), first subparagraph, TEU requires, first, that the objectives of the measure at issue cannot be sufficiently achieved at national level and, secondly, that they can be better achieved at Union level. As regards the first requirement, Mastroianni argues that the

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[45] *Gärditz*, in: Scheurle/Mayen (eds), Telekommunikationsgesetz, 3rd ed. 2018, Introduction II: Requirements under Union law, A. I., para. 6.

[46] See, for example, ECJ, judgment of 11 December 2018, Case C-493/17 (Weiss and Others), ECLI:EU:C:2018:1000, para. 31; judgment of 16 June 2015, Case C-62/14 (Gauweiler and Others), ECLI:EU:C:2015:400, para. 17; judgment of 19 November 2013, Case C-63/12 (Commission v Council), ECLI:EU:C:2013:752, para. 98.

[47] See, for example, ECJ, judgment of 10 December 2002, Case C-491/01 (BAT and Others), ECR I-11453, para. 179; for a more detailed discussion, see *Classen*, in: von der Groebe/Schwarze/Hatje/Terhechte (eds), Europäisches Unionsrecht, 8th ed. 2025, Article 114 TFEU, para. 105, with further references.

[48] *Classen*, in: von der Groebe/Schwarze/Hatje/Terhechte (eds), Europäisches Unionsrecht, 8th ed. 2025, Article 114 TFEU, paras 106 et seq.; see also Schröder, in: Streinz (ed.), EUV/AEUV, 3rd ed. 2018, Article 114 TFEU, para. 67.

[49] This is confirmed, for example, by *Mast*, GRUR Int. 2024, 607 (610), with further references.

[50] *Schröder,* in: Streinz (ed.), EUV/AEUV, 3rd ed. 2018, Article 114 TFEU, para. 67; see, for example, ECJ, judgment of 4 May 2016, Case C-547/14 (Philip Morris), ECLI:EU:C:2016:235, paras 216 f.

current Article 81 of the EECC already confers sufficient powers on national regulatory authorities to supervise and steer the migration process (paragraph 28). It is true that he can be agreed with in so far as the migration process has already begun in some Member States some time ago and in some is (almost) complete. France, for example, started switching off copper networks in 2025. [51] However, in view of the existing heterogeneous starting situations in terms of fibre roll-out, which are also attributable to differing national regulatory approaches, [52] the objective of achieving a single market for telecommunications does not appear attainable at national level. Accordingly, contrary to Mastroianni's view, who in his discussion of subsidiarity does not address the internal market, the first requirement in Article 5(3), first subparagraph, TEU is already fulfilled. A fortiori, the second requirement must be regarded as satisfied in the present case.

The principle of competence-related proportionality in Article 5(1), second sentence, and (4) TEU likewise lays down only limited requirements, beyond the constituent conditions of Article 114 TFEU. [53] That principle requires that "the means employed by a provision of Community law must be appropriate for attaining the legitimate objectives pursued by the legislation at issue and must not go beyond what is necessary to achieve them". [54] In that context, the Court of Justice in any case examines suitability and necessity, [55] and in some instances also appropriateness.[56] Here too, the Union legislature enjoys wide discretion, in particular where complex balancing exercises are involved, for example in economic or technical respects. [57] In the examination of competence-related and substantive proportionality, certain similarities can be

[51] *European Commission*, Digital Decade 2025 Country Report France, 16 June 2025, SWD(2025) 294 final, Part 10/27, p. 7.
[52] *European Commission*, Impact Assessment Report, 21 January 2026, SWD(2026) 13 final, Part 1/3, pp. 34 et seq.
[53] *Classen*, in: von der Groebe/Schwarze/Hatje/Terhechte (eds), Europäisches Unionsrecht, 8th ed. 2025, Article 114 TFEU, para. 110.
[54] ECJ, judgment of 8 June 2010, Case C-58/08 (Vodafone and Others), ECR I-4999, para. 51; judgment of 6 December 2005, Joined Cases C-453/03 and Others (ABNA and Others), ECR I-10423, para. 68.
[55] See, for example, ECJ, judgment of 3 December 2019, Case C-482/17 (Czech Republic v Parliament and Council), ECLI:EU:C:2019:1035, para. 76; judgment of 4 May 2016, Case C-358/14 (Poland v Parliament and Council), ECLI:EU:C:2016:323, para. 78; judgment of 13 May 1997, Case C-233/94 (Federal Republic of Germany v European Parliament and Council of the European Union), ECR I-2405, para. 54; judgment of 30 November 1995, Case C-55/94 (Gebhard), ECR I-4165, para. 37.
[56] See, for example, ECJ, judgment of 4 May 2016, Case C-547/14 (Philip Morris), ECLI:EU:C:2016:235, para. 165; judgment of 16 June 2015, Case C-62/14 (Gauweiler and Others), ECLI:EU:C:2015:400, para. 91; judgment of 9 March 2010, Joined Cases C-379/08 and C-380/08 (ERG and Others), ECR I-2007, para. 86.
[57] ECJ, judgment of 11 December 2018, Case C-493/17 (Weiss and Others), ECLI:EU:C:2018:1000, para. 73; judgment of 16 June 2015, Case C-62/14 (Gauweiler and Others), ECLI:EU:C:2015:400, para. 68; judgment of 17 October 2013, Case C-203/12 (Billerud Karlsborg AB and Others), ECLI:EU:C:2013:664, para. 35; judgment of 8 July 2010, Case C-343/09 (Afton Chemical Limited), ECR I-7062, para. 28; judgment of 8 June 2010, Case C-58/08 (Vodafone and Others), ECR I-4999, para. 52; judgment of 12 November 1996, Case C-84/94 (United Kingdom and Northern Ireland v Council of the European Union), ECR I-5755, para. 58.

identified[58] – which are, in detail, certainly open to discussion, as one is competence-driven and the other based on fundamental rights – so that reference can first be made, in the present case, to the detailed examination of the proportionality of the rule-based switch-off procedure in the legal opinion.[59] Thus, for example, transitional periods can also contribute to proportionality here (see I.1 above).[60] In examining competence-related proportionality, the Court of Justice also takes into account, inter alia, any impact assessments by the European Commission.[61] In the present case, the Commission has carried out a comprehensive assessment of the economic starting point and the effects.[62] In its impact assessment report, it considers in particular various regulatory options, namely, first, "Non-binding copper switch-off and limited updates to access regulation", secondly, "Conditional copper switch-off and updated access regulation", thirdly, "Market-driven copper switch-off and bottleneck-based access regulation", and fourthly, "Mandatory copper switch-off and symmetric regulation". [63] The European Commission likewise analyses the effects of those options. [64]

Moreover, the examination of competence-related proportionality also covers the choice of the form of action, with directives tending to be given precedence over regulations. [65] In the present case, however, the EECC-directive package did not result in a sufficient promotion of the single market for telecommunications, but rather in fragmentation (see also recital 4 DNA proposal; see 1 above), so that, here too, the choice of a regulation as the form of action can be justified as necessary.

In conclusion, contrary to Mastroianni's view, there is therefore no infringement of either the principle of subsidiarity or the principle of competence-related proportionality in Article 5(1), second sentence, and (3) and (4) TEU. Here again, Mastroianni applies a strict standard of review which, once more, does not reflect the Court of Justice's case-law, that case-law instead

[58] See ECJ, judgment of 11 December 2018, Case C-493/17 (Weiss and Others), ECLI:EU:C:2018:1000, paras 71 et seq.; judgment of 16 June 2015, Case C-62/14 (Gauweiler and Others), ECLI:EU:C:2015:400, paras 66 f.; judgment of 8 June 2010, Case C-58/08 (Vodafone and Others), ECR I-4999, paras 61 et seq. For a unified standard of review under Article 5(4) TEU and the general principle of proportionality, see *Kadelbach*, in: von der Groebe/Schwarze/Hatje/Terhechte (eds), Europäisches Unionsrecht, 8th ed. 2025, Article 5 TEU, para. 49.
[59] *Kühling,* fn. 2, D. I. 1. (c) (bb).
[60] See ECJ, judgment of 4 May 2016, Case C-547/14 (Philip Morris), ECLI:EU:C:2016:235, para. 187.
[61] ECJ, judgment of 8 June 2010, Case C-58/08 (Vodafone and Others), ECR I-4999, para. 55.
[62] *European Commission*, Impact Assessment Report, 21 January 2026, SWD(2026) 13 final.
[63] *European Commission,* Impact Assessment Report, 21 January 2026, SWD(2026) 13 final, Part 1/3, pp. 78 et seq.
[64] *European Commission*, Impact Assessment Report, 21 January 2026, SWD(2026) 13 final, Part 1/3, pp. 91 et seq.
[65] *Schröder,* in: Streinz (ed.), EUV/AEUV, 3rd ed. 2018, Article 114 TFEU, para. 64.

granting the Union legislature an appropriate margin of discretion, particularly in economic-policy decisions.

3. Further provisions and principles of Union law

Contrary to Mastroianni's view (paragraph 51), there is, in any event, no infringement of the consumer-protection objective in Article 38 CFR,[66] since consumer-policy concerns are intended to be taken into account in the switch-off procedure, see for example Articles 57(1)(b) and 59 of the DNA proposal.

In so far as, in line with Mastroianni's view (paragraph 57), the requirements of equal treatment and the prohibitions of discrimination in Articles 20 and 21 CFR are at all applicable in the present case, any interference with them is in any event justified by the existence of an objective ground of justification[67] and by proportionality[68].

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[66] *Krebber,* in: Calliess/Ruffert (eds), EUV/AEUV, 6th ed. 2022, Article 38 CFR, para. 5.
[67] On the legitimate aim pursued by the rule-based switch-off procedure under Article 17 CFR, see *Kühling*, fn. 2, D. I. 1. (c) (bb) (2).
[68] Whether proportionality of the interference is required in this respect can therefore be left open in the present case. See on this point, for example, *Rossi*, in: Calliess/Ruffert (eds), EUV/AEUV, 6th ed. 2022, Article 20 CFR, paras 26 et seq.

III. Conclusion of the legal assessment

The publication, in May 2026, of the legal opinion drawn up by former General Court judge Professor Roberto Mastroianni on behalf of Connect Europe prompted the present supplementary assessment, prepared on behalf of BREKO, following the author's legal opinion of March 2026. This assessment reaches the following conclusions:

1. With regard to the compatibility of the rule-based switch-off procedure in Articles 53 to 61 of the DNA proposal with the standards of review already examined in the author's legal opinion of March 2026, the legal opinion drawn up by Mastroianni does not warrant any different assessment.
2. In conclusion, contrary to Mastroianni's submissions, there is no breach of the guarantee of property rights in Article 17 CFR by the planned secondary-law provisions, and the comprehensively reasoned assessment in the legal opinion of March 2026 is to be maintained. The judgments relied on by Mastroianni cannot justify the strict standard which he applies; they restrict the legislature's discretion in economic-policy matters in a way that does not reflect the Court of Justice's case-law, and his subsequent application of the law fails to take account of the extensive, countervailing public-interest considerations that justify the interference. In particular, on the basis of the case-law, there is also no (de facto) expropriation giving rise to an obligation to pay compensation.
3. Nor is there any breach of the freedom to conduct a business under Article 16 CFR. Here too, Mastroianni's reasoning disregards important public-interest grounds for justifying the – admittedly intensive – interference and applies a standard that cannot be derived from the Court of Justice's case-law. The risk of an infringement of the essence of Article 16 CFR asserted by Mastroianni is even less to be assumed.
4. The breach of Article 345 TFEU alleged by Mastroianni in respect of the rule-based switch-off procedure is particularly remote. Rather, his argumentation clearly shows that his assertions lack support in the Court of Justice's case-law: in order to argue for a restriction of the Union legislature based on Article 345 TFEU, Mastroianni relies on two judgments which do not address Article 345 TFEU at all and on one judgment which concerns not the Union legislature but the national legislature. In fact, there are no judgments of the Court of Justice from which the alleged significant restriction of the Union legislature's room for manoeuvre in adopting economic-policy legislation could be inferred. Despite differing attempts in the literature to interpret it, Article 345 TFEU ultimately remains cryptic.

5. Nor do the other standards of review under Union primary law, which the author of the present submission had not yet examined, lead to the (possible) infringements alleged by Mastroianni.
6. Contrary to Mastroianni's view, there is no infringement either of the principle of conferral in Article 5(1), first sentence, and (2) TEU on account of the conditions for recourse to the internal-market competence in Article 114 TFEU not being met, or of the European Commission's obligation to state reasons under Article 296 TFEU. Here too, Mastroianni applies an extremely strict standard for reviewing the relevant conditions, which simply does not reflect the Court of Justice's case-law, that case-law instead granting the Union legislature a significant margin of discretion.
7. Along the same lines, contrary to Mastroianni's view, there is likewise no infringement of the principles of subsidiarity and competence-related proportionality in Article 5(1), second sentence, and (3) and (4) TEU. Here again, Mastroianni applies a strict standard which, once more, does not reflect the Court of Justice's case-law, that case-law instead granting the Union legislature an appropriate margin of discretion, particularly in economic-policy decisions.
8. Finally, there is no infringement of the consumer-protection objective in Article 38 CFR, contrary to Mastroianni's view, since consumer-policy concerns are intended to be comprehensively taken into account in the switch-off procedure, see for example Articles 57(1)(b) and 59 of the DNA proposal. In so far as, in line with Mastroianni's view, the requirements of equal treatment and the prohibitions of discrimination in Articles 20 and 21 CFR are at all applicable in the present case, any interference with them is in any event justified by the existence of an objective ground of justification and by proportionality.

Regensburg, 27 July 2026

Signed: Professor Dr. iur. Jürgen Kühling, LL.M. (Brussels)