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FLASH NEWS

2/25

NATIONAL DECISIONS OF INTEREST TO THE EU

OVERVIEW FOR FEBRUARY – END MARCH 2025

Finland – Supreme Administrative Court

Protection of personal data - Regulation (EU) 2016/679 - Processing and circulation of personal tax data - De-indexing - Processing for journalistic purposes

Two major Finnish newspapers had obtained public data on the taxes and income of individuals in Finland from the tax authorities. In this context, A, a natural person, requested, on the basis of the provisions of Regulation (EU) 2016/679, that his personal data posted online be deleted and not processed. Based on the Satakunnan Markkinapörssi judgments of the Grand Chamber of the Court of Justice (C-73/07) and the Grand Chamber of the European Court of Human Rights (CE:ECHR:2017:0627JUD000093113), the Supreme Administrative Court ruled that the processing of personal data relating to taxation in this case should be considered to have been carried out solely for journalistic purposes within the meaning of the Data Protection Act. The high court took into consideration, on the one hand, the protection of personal data and, on the other hand, the rights to freedom of expression and freedom of information. Therefore, pursuant to Regulation (EU) 2016/679, A does not have the right to object to the processing of his personal data available on the websites of the two newspapers or to request its deletion.

Korkein hallinto-oikeus, decision of 3.2.2025 ECLI:FI:KHO:2025:15 (**FI**)/(**SV**)

Austria – Administrative Court

Border controls, asylum and immigration - Conditions for international protection - Acts of persecution - Incompatibility with human dignity

The Administrative Court ruled that it was not necessary in the main proceedings to verify whether the asylum seeker had an 'internalised Western orientation' in order to be eligible for international protection. In this case, an Afghan woman had applied for international protection for herself and her daughters due to the measures being taken against women in Afghanistan. In accordance with the judgment of the Court of Justice of 4 October 2024 in Bundesamt für Fremdenwesen und Asyl and Others (Femmes afghanes) (C-608/22 and C-609/22), the Administrative Court ruled that there were grounds to assume that acts of persecution would be committed against Afghan women on the grounds that the situation in that country forces them to lead a life incompatible with human dignity.

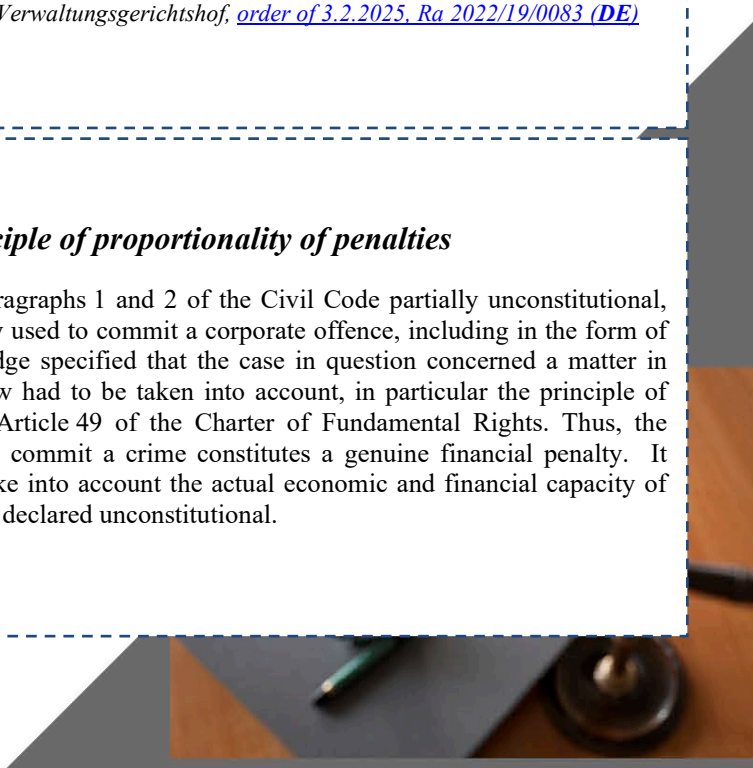
Verwaltungsgerichtshof, order of 3.2.2025, Ro 2023/19/0003 (**DE**)
Verwaltungsgerichtshof, order of 3.2.2025, Ra 2022/19/0083 (**DE**)

Italy – Constitutional Court

Constitutional review – Confiscation of property – Principle of proportionality of penalties

In its judgment, the Constitutional Court declared Article 2641, paragraphs 1 and 2 of the Civil Code partially unconstitutional, insofar as this provision provided for the confiscation of all property used to commit a corporate offence, including in the form of confiscation of property of equivalent value. The constitutional judge specified that the case in question concerned a matter in which constitutional principles and obligations arising from EU law had to be taken into account, in particular the principle of proportionality of criminal offences and penalties referred to in Article 49 of the Charter of Fundamental Rights. Thus, the constitutional court ruled that the confiscation of property used to commit a crime constitutes a genuine financial penalty. It further held that national regulations that do not allow judges to take into account the actual economic and financial capacity of individuals result in disproportionate penalties and must therefore be declared unconstitutional.

Corte costituzionale, judgment of 4.0.2025, No 7 (**IT**)



Belgium – Constitutional Court

Part-time work - Calculating the seniority of teachers working less than half-time

The Constitutional Court ruled that the method of calculating the length of service of certain teachers provided for in a Flemish decree was unconstitutional. This decree stipulated that, for the purposes of calculating the seniority required for permanent appointment, the number of days worked by teachers working less than half-time should be divided by two. In light of the principle of equality and non-discrimination, as also guaranteed by the framework agreement on part-time work, the high court considered that requiring staff to have a minimum amount of experience in order to guarantee the quality of teaching did not reasonably justify this method of calculating seniority, since teachers only accumulate seniority for the percentage of their working time spent in part-time employment. Furthermore, halving the seniority days thus accumulated would mean that the teachers concerned would be disadvantaged because of their part-time employment.

*Grondwettelijk Hof, judgment of 6.2.2025, No 18/2025 **(FR)**/**(NL)***
Press release (FR)/(NL)

Germany – Federal Court of Justice

Consumer protection - Distance selling contract - Information on the right of withdrawal

After hearing numerous appeals, the Federal Court of Justice ruled that, when concluding a distance selling contract, consumers are not entitled to be given the telephone number of a trader if the information on the right of withdrawal mentions the trader's postal address and email address as examples of means of communication.
In this case, the trader in question had not used the standardised withdrawal information, but a partially different version, drafted by itself, which included its postal address and email address, but not its telephone number, which was, however, available on its website. The high court found that Article 6(1)(h) of Directive 2011/83/EU does not specify the exact type of means of communication to be indicated, but requires that means be made available to enable the consumer to contact the trader quickly and communicate with it effectively. The court also considered that, according to an interpretation consistent with the directive, the absence of a telephone number did not prevent the withdrawal period from running, as this had no impact on consumers' ability to exercise their right of withdrawal within the 14-day period. Furthermore, it considered that this assessment was so obvious that it left no room for reasonable doubt.

*Bundesgerichtshof, order of 25.2.2025, VIII ZR 143/24 **(DE)***
Press release (DE)

Netherlands – Council of State

Border controls, asylum and immigration - Detention of asylum seekers at the border - Specialised detention centre - Concept

The Council of State ruled that the detention of an asylum seeker in the Justitieel Complex Schiphol prison met the conditions for detention in a 'specialised detention centre' within the meaning of Directive 2013/33/EU. Based on the Landkreis Gifhorn judgment of the Court of Justice (C-519/20), the Dutch high court reiterated that, in order to determine whether an establishment can be classified as a 'specialised detention centre', particular attention must be paid to the layout of the premises specifically used for detention, the rules specifying the conditions of detention and the qualifications and powers of the staff in charge of the establishment. In doing so, it noted that, although the premises used for the detention of third-country nationals are identical to those where convicted persons are held, the two groups are separated from each other. Furthermore, the constraints faced by these two groups vary. People who have been convicted of a crime spend fewer hours a week outside their cells than third-country nationals. The latter group also has greater access to outdoor areas. Thus, according to the Council of State, the restrictions imposed on third-country nationals are limited to what is strictly necessary to achieve the objective pursued by detention at the border and to protect their safety and that of the personnel in charge.

*Raad van State, decision of 26.2.2025, 202500661/1/V3 **(NL)***
Press release (NL)

Sweden – Supreme Administrative Court

Protection of personal data - Court proceedings - Access to documents

Citing Article 15 of Regulation (EU) 2016/679 on the protection of personal data, an individual had repeatedly requested that the Administrative Court of Appeal grant access to various documents containing his personal data. These documents related to cases concerning the right of access to public documents in which the individual was himself the applicant. The Administrative Court of Appeal had responded by providing him with a summary of the personal data processed in the requested documents, reproducing only the personal data that concerned him. According to the Court, the rights of the individual under the relevant regulation were thus satisfied. In its judgment of 28 February 2025, the Högsta domstolen (Supreme Administrative Court, Sweden) upheld this position and ruled that the summaries provided by the Administrative Court of Appeal were sufficient to enable the individual to exercise his rights effectively under the General Data Protection Regulation.

*Högsta förvaltningsdomstolen, judgment of 28.2.2025, No 4570-24 (**SV**)*

Greece – Council of State

Customs union – Community Customs Code – Retrospective recovery of anti-dumping duties – Right to be heard

With regard to a decision by the customs authorities imposing on a public limited company the retroactive recovery of anti-dumping duties on the grounds that North Korea had imported steel cables of non-preferential origin, the Council of State ruled that the right to be heard must be respected before the adoption of individual measures of adverse effect falling within the scope of EU law. This obligation is incumbent on the national administration, even if neither the Community Customs Code nor the applicable national regulations expressly provide for such a procedural formality. In reaching this conclusion, the Council of State relied on the case-law of the Court, according to which provisions of EU law, such as those of the Customs Code, must be interpreted in the light of fundamental rights, which form an integral part of the general principles of law, such as the principle of respect for the rights of the defence.

*Symvoulio tis Epikrateias, judgment of 5.3.2025, No 352/2025, **[EL]** (available on request)*

Denmark – Supreme Court

Judicial cooperation in civil matters - 1980 Hague Convention on the Civil Aspects of International Child Abduction - Request for return - Decision not to return the child - Best interests of the child

In its judgment, the Supreme Court ruled on the possible return of a child to its father on Ukrainian territory. In this case, the child concerned was born in Ukraine to two Ukrainian parents. Due to the war in that country, the parents agreed that the mother and child would move to Poland. However, after a stay in Poland, they moved to Denmark. The father, who still lives in Ukraine, requested the return of the child under the 1980 Hague Convention on the Civil Aspects of International Child Abduction. The Supreme Court noted that the child should be considered as residing in Ukraine within the meaning of the Convention and that the father had not consented to or accepted the child's staying in Denmark. Given that this was therefore a case of child abduction or unlawful detention, the child had, in principle, to be returned to its father in Ukraine. However, taking into account the best interests of the child, the Supreme Court concluded that this should not be the case, as its return would place it in a situation that it should not have to endure.

*Højesteret, order of 7.3.2025, BS-25052/2024-HJR (**DA**)*

France – Council of State

Border controls, asylum and immigration - Regulation (EU) 2024/1717 - Temporary reintroduction of internal border controls

The Council of State rejected the request submitted by associations seeking the annulment of the decision by which the Prime Minister had reintroduced border controls for a period of six months in October 2024. It ruled that this decision was an initial decision to reintroduce border controls for six months under the Schengen Borders Code, as amended by Regulation (EU) 2024/1717, and not an extension of the decisions to reintroduce controls initiated since 2015. Furthermore, it considered that this restoration was proportionate in view of the terrorist and criminal threats facing France and necessary to prevent them effectively. Thus, the contested decision was found to be in accordance with the Schengen Borders Code, applicable for the first time in its amended version.

*Conseil d'État, decision of 7.3.2025, No 499702 (**FR**)*

Sweden – Supreme Court

European Arrest Warrant – Extended surrender – Offence committed prior to surrender

By order, the Högsta domstolen (Supreme Court) agreed to make a detention measure subject to a request for 'extended surrender' in connection with a European Arrest Warrant. In this case, the suspect had been surrendered by Germany to Sweden on the basis of a European Arrest Warrant for aggravated robbery. Subsequently, the Swedish court of first instance hearing the case also remanded him in custody for attempted murder committed prior to his surrender. However, that court made the enforcement of that detention conditional on Germany agreeing to prosecute the new offence. The Supreme Court found that, under EU law, a request for extended surrender must contain information that the suspect has been detained for an additional crime. Furthermore, the Supreme Court observed that Swedish law did not provide for the possibility of attaching conditions to a detention measure. However, in the absence of such a possibility in the context of extended surrender, the attempted murder in question, and any offence committed prior to the surrender of the suspect, could not be prosecuted, which would render the extended surrender ineffective.

Högsta domstolen, Order of 14.3.2025, No Ö 9115-24 ***(SV)***

Cyprus – Supreme Court

Habeas corpus – Detention of an applicant for international protection on grounds of public policy

In its judgment, the Supreme Court rejected the habeas corpus application of an applicant for international protection who had been detained on grounds of public policy. It reiterated that, in the context of reviewing the lawfulness of the length of detention of an applicant for international protection, the applicant's right to effective judicial protection must be assessed in light of the protection of the national security of the State. Given the broad discretion enjoyed by the State in matters of public safety, a court cannot substitute its own assessment of the danger posed by the applicant for that of the administration, nor can it conduct a substantive review of the information on which the latter based its decision to place the applicant in detention on grounds of public policy.

Ανώτατο Δικαστήριο Κύπρου, judgment of 17.3.2025, No 34/2025 ***(GR)***

Netherlands – Supreme Court

Protection of personal data - Electronic communications - Access by public authorities to electronic data - Prior checking

The Supreme Court clarified its case-law on the use of electronic data storage devices in order to comply with the requirements of the Bezirkshauptmannschaft Landeck judgment of the Court of Justice (Tentative d'accès aux données personnelles stockées sur un téléphone portable, C-548/21). In accordance with the principle of proportionality, the Supreme Court ruled that access by police officers and judicial police officers to electronic personal data must be subject to review by an investigating judge if such access entails a risk of serious infringement of the user's privacy. This is particularly the case where it can be predicted in advance that the use of a smartphone or other electronic data carriers would not only provide access to traffic and location data, but also to data such as photos, browser history, the content of communications exchanged and sensitive data.

Hoge Raad, decision of 18.3.2025, 22/03889 ***(NL)***
Press release (NL)

Germany – Federal Court of Justice

Competition - Cartels - Undertakings of primary importance for competition

The chamber of the Federal Court of Justice responsible for cartel matters upheld the decision of the Bundeskartellamt (Federal Cartel Office) recognising that Apple Inc., including its associated companies, has significant activities in multilateral markets and is of primary importance for competition in all markets. This finding allows the Federal Office to prohibit certain conduct by the undertaking concerned. Through its operation of the App Store and its mobile operating systems, such as iOS for the iPhone and iPadOS for the iPad, Apple engages in significant activity in multilateral markets. With regard to such markets, the German high court clarified that this does not only refer to platforms on which commercial transactions between different groups of users take place or are negotiated, but that it is sufficient for the platform to draw the attention of one group of users to another or to enable interaction between different groups of users. Furthermore, the court found that the national decision of the Federal Office did not preclude that undertaking from being designated as an access controller under Article 3 of Regulation (EU) 2022/1925 (Digital Markets Act) in respect of its mobile operating systems and app stores.

Bundesgerichtshof, order of 18.3.2025, KVB 61/23 ***(DE)***
Press release (DE)

France – Constitutional Court

Environment - Fish farming - Authorisation or declaration system

The Constitutional Council censored, on substantive grounds, seven articles of the Framework Law on food sovereignty and generational renewal in agriculture, either in part or in full. In particular, it considered that the provisions of Article 1 prohibiting the regulatory authority from adopting, in relation to agriculture, provisions exceeding the requirements of transposition or adaptation resulting from a European Union directive or regulation, violated the principle of separation of powers. Furthermore, given the impact of fish farming on water resources and aquatic ecosystems, it considered that Article 48 of the Law, which excludes fish farms from the authorisation or declaration regime applicable to installations, structures, works and activities, was likely to cause damage to the environment.

*Conseil constitutionnel, decision of 20.3.2025, No 2025-876 DC (**FR**)*

Romania – Constitutional Court

Membership of the North Atlantic Treaty Organisation (NATO) - Consequences - Transfer and sharing of powers relating to national airspace control

As part of a preliminary constitutional review, the Constitutional Court ruled that the provisions of the Law on the control of the use of national airspace involving the sharing of powers between national authorities and designated authorities of the North Atlantic Alliance are in line with the Constitution. With regard to national air traffic control, the high court considered that the participation of and measures taken by designated military authorities of the Alliance or by structures of allied and partner States should be analysed in the context of Romania's obligations as a NATO Member State. However, membership of NATO involves both the transfer of certain attributes and the joint exercise of certain powers with other Member States, which does not affect national sovereignty. . The Constitutional Court also ruled that regulating a shared competence between institutions that are part of the national defence system and the structures of allied and partner States did not affect the exercise of national sovereignty in any way, since it established a means of defending national airspace, which is integrated into NATO airspace.

*Curtea constituțională, decision of 27.3.2025, No 154 **(RO)***
Press release (RO)

France – Criminal Court of Paris

European Parliament - Parliamentary assistants to Front National MEPs - Fake jobs - Misuse of public funds

The Criminal Court of Paris convicted the National Rally and twenty-five of its executives or associates for embezzlement of public funds due to the assignment of their European parliamentary assistants to tasks carried out for the benefit of the political party. Given the seriousness of the offences committed, her position as a Member of the European Parliament at the time of the offences, her legal training, her failure to repay the undue salaries to the European Parliament voluntarily and her position 10 years after the offences, the party president was sentenced to four years' imprisonment, two of which were suspended, an additional five-year disqualification from public office with immediate effect, and a fine of EUR 100 000. The judges considered that the risk of reoffending had been objectively established. Similarly, they took into consideration the irreparable disruption to democratic public order that would result from the fact that the person concerned was standing as a candidate, or even being elected, in the presidential election, when she had been sentenced in the first instance to disqualification from standing for election, which could be confirmed on appeal.

*Tribunal correctionnel de Paris, judgment of 31.3.2025, No 15083000886 (**not published**)*

Bulgaria - Supreme Administrative Court

Border controls, asylum and immigration - Refusal to grant subsidiary protection to a Syrian national

The Supreme Administrative Court rejected the appeal lodged by a Syrian national against the decision of the National Agency for Refugees refusing to grant him subsidiary protection. Referring to the information in the case file, as well as to well-known facts concerning the political and social situation in Syria following the fall of President Bashar al-Assad's regime in early December 2024, the high court considered that, notwithstanding the insecurity and complexity of the situation, the assumption of indiscriminate violence exposing the applicant to a real threat to his life or physical integrity solely because of his presence on the territory of that State, regardless of his personal circumstances, was not justified. In support of this conclusion, it cited data collected in the case indicating that 303 400 Syrians voluntarily returned to Syria during the period from 8 December 2024 to 6 March 2025, and that 885 294 internally displaced persons had returned to their homes as of 27 November 2024.

*Върховен административен съд(Varhoven administratien sad), judgment of 22.4.2025, No 4217 (**BG**)*

Previous decisions

Poland – Supreme Court

Consumer protection - Unfair terms - Mortgage loan indexed to a foreign currency - Bank's margin

In an appeal in cassation brought by consumers against a bank, the Supreme Court upheld the judgment of the Court of Appeal in Wroclaw that was the subject of the appeal. The latter had ruled that, although the disputed loan agreement contained unfair terms and was therefore not binding on the parties to that extent, the remaining part of the agreement remained binding on them. The Supreme Court acknowledged that the contractual clause relating to the bank's margin in setting the exchange rate was independent in nature, which meant that only that clause could be removed. The bank's margins fulfil an independent economic function and are not intrinsically linked to the loan indexation mechanism. Referring to the Bank BPH judgment of the Court of Justice (C-19/20), the Supreme Court emphasised that the removal of the clause relating to banking margins does not imply a modification of the unfair clause and, in particular, its replacement by another contractual clause. The clauses linking the loan to a foreign currency were separate from the clause deemed unfair, which allowed the bank to add a margin to the exchange rate.

*Sąd Najwyższy, judgment of 6.12.2024, II CSKP 132/23 (**PL**)*
*Press release (**PL**)*

Germany – Federal Finance Court

Protection of personal data - GDPR - Taxpayer's right of access

The Federal Finance Court ruled for the second time on the conditions and scope of the right of access to a taxpayer's personal data under Article 15(1) of the General Data Protection Regulation (GDPR). Firstly, the finance court clarified that the data controller cannot invoke the fact that access to information under Article 15 of the GDPR requires disproportionate effort, given that this only applies to the information obligation provided for in Article 14 of that regulation. Furthermore, the court stated that a request for access cannot be considered excessive within the meaning of Article 12(5), second and third sentences, where the data subject wishes to obtain information about his or her personal data without specifying the time period or the subject matter of the request.
Finally, it emphasised that the right of access is satisfied when the information provided constitutes all the information due. In this regard, it is essential that the information provider declares, where appropriate implicitly, that the information provided is complete.

*Bundesfinanzhof, judgment of 14.1.2025 (published on 6.3.2025), IX R 25/22 (**DE**)*

Denmark – Supreme Court

Protection of personal data - Electronic communications - Traffic and location data stored on the basis of legal provisions other than those issued pursuant to Article 15(1) of Directive 2002/58/EC - Charter of Fundamental Rights - Articles 7 and 8

As part of a criminal investigation, the police asked several telecommunications companies to urgently secure data from phones that had been recorded on mobile phone masts in certain specified areas and for specific periods of time. Subsequently, the prosecutor asked the court to order those companies to provide such data in order to identify the mobile phones that the suspect in the case was believed to be using. It follows from Article 15(1) of Directive 2002/58/EC that Member States may adopt legal provisions on the retention of traffic and location data for a limited period if this can be justified on grounds of, inter alia, national security and the prevention, investigation, detection and prosecution of criminal offences. In this case, the Supreme Court ruled that the case-law of the Court of Justice (in particular Case C-470/21) allows such access to data, provided that they are not the result of State-imposed retention and are used for legitimate purposes of investigating serious crimes. It considered that there was no need to stay the proceedings pending the Court's decision in Case C-241/22.

*Højesteret, order of 29.1.2025, SS-46/2024-HJR (**DA**)*

Spain – Supreme Court

Revolving cards - Interest rates - Criteria for determining whether they are unfair

In its judgment, the Supreme Court established criteria for assessing whether the interest rate on revolving credit cards was unfair due to a lack of transparency. Firstly, the high court recalled that, in the Andriciuc judgment (C-186/16), the Court of Justice had emphasised the importance of verifying that all factors likely to affect the scope of the consumer's commitment had been communicated to them before the contract was concluded. Secondly, the Supreme Court ruled that, once it had been established that the terms of the contract were not transparent, it had to be verified whether they were unfair. In this regard, it considered that, in the case of revolving credit cards, the lack of transparency regarding the annual percentage rate of charge (APRC), taken together with the clauses relating to the repayment system, compound interest and the low monthly subscription fee, gave rise to a significant imbalance to the detriment of the consumer, despite the requirements of good faith.

Tribunal Supremo, judgment of 30.1.2025, No 154/2025 ECLI:ES:TS:2025:242 (**ES**)