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FLASH NEWS

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NATIONAL DECISIONS OF INTEREST TO THE EU

OVERVIEW FOR APRIL – END MAY 2025

Germany – Federal Labour Court

Social policy - Prohibition on dismissing pregnant women - Retrospective admission of appeals against dismissal

The Federal Labour Court ruled that when an employee learns, through no fault of her own, after the expiry of the time limit for appealing against her dismissal, that she was already pregnant at the time of receiving the letter of dismissal, her late appeal must, at her request, be accepted retrospectively. In this context, the high court considered that the reservations expressed by the Court of Justice in the Haus Jacobus judgment (C-284/23), could be sufficiently taken into account in the interpretation of the national provision relating to the admissibility of late appeals against dismissal. In particular, the Federal Labour Court ruled that the two-week period for the retrospective admission of a late appeal was no less advantageous than the normal three-week period for appeals against dismissal, as the pregnant woman would already have an additional period of reflection before the start of the period in question. It therefore concluded that the German system of protection against dismissal for pregnant employees satisfied the requirements of Directive 92/85/EEC and the principle of effectiveness.

*Bundesarbeitsgericht, judgment of 3.4.2025, 2 AZR 156/24 (**DE**)*
Press release (DE)

Austria – Supreme Administrative Court

Right of residence and work - Access to the national labour market - Child of Austrian nationality

A Nigerian woman filed an application seeking confirmation of her free access to the Austrian labour market, based on the fact that her child has Austrian nationality, from which she derives a right of residence and work under Article 20 TFEU. The Supreme Administrative Court rejected the application on the grounds that the mother could only derive her right of residence from that of her child if the latter would be forced to leave Austria in the event of a refusal of residence. Given that she already had a residence permit allowing her to work in Austria, the high court ruled that she was not entitled to any other rights.

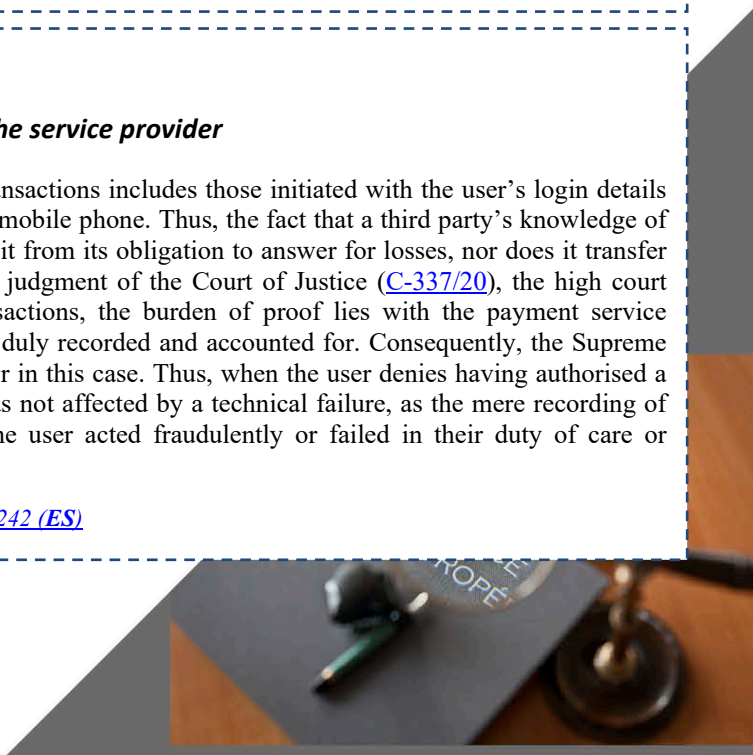
Verwaltungsgerichtshof, order of 7.4.2025, Ra 2024/09/0087 (DE)

Spain – Supreme Court

Payment services - Unauthorised transactions - Liability of the service provider

The Supreme Court considered that the concept of unauthorised transactions includes those initiated with the user's login details and password and confirmed with a text message sent to the user's mobile phone. Thus, the fact that a third party's knowledge of passwords is not attributable to the banking entity does not release it from its obligation to answer for losses, nor does it transfer the obligation to bear them to the user. Referring to the CRCAM judgment of the Court of Justice (C-337/20), the high court reiterated that, under the rules on liability for unauthorised transactions, the burden of proof lies with the payment service provider, which must prove that the transaction was authenticated, duly recorded and accounted for. Consequently, the Supreme Court recognised the quasi-objective liability of the service provider in this case. Thus, when the user denies having authorised a transaction, the service provider must prove that the transaction was not affected by a technical failure, as the mere recording of the transaction does not prove that it was authorised, nor that the user acted fraudulently or failed in their duty of care or committed gross negligence.

*Tribunal Supremo, judgment of 9.4.2025, No 571/2025, ECLI:ES:TS:2025:242 (**ES**)*



Germany – Federal Administrative Court

Border controls, asylum and immigration - Absence of inhuman or degrading reception conditions

In two rulings, the Federal Administrative Court found that there is currently no inhumane or degrading reception situation for recognised non-vulnerable refugees in Greece. Thus, asylum applications submitted in Germany by these persons may be rejected as inadmissible, in accordance with EU law. The high court ruled that single persons who are able to work and are not vulnerable, and who have refugee status in Greece, do not currently risk being subjected to degrading or inhuman living conditions that would violate Article 4 of the Charter of Fundamental Rights if they return to Greece. Accordingly, it should not be expected that refugees returning to Greece would find themselves in a situation of extreme material distress that would not allow them to meet their most basic needs in terms of housing, food and hygiene. While waiting to access public assistance services, they could probably be housed in temporary accommodation or emergency shelters equipped with basic sanitary facilities. Emergency medical care and first aid would also be provided.

Bundesverwaltungsgericht, judgments of 16.4.2025, 1 C 18.24 and 1 C 19.24 (not yet published)
Press release (DE)

Latvia – Supreme Court

Company law - Member of the management committee of a limited company - Financial compensation for untaken leave - Article 31(2) of the Charter of Fundamental Rights of the European Union - Article 7 of Directive 2003/88/EC

The Supreme Court ruled on the right of a person who had been dismissed from their position as a member of the management committee of a limited company to receive compensation for unused holiday leave. It ruled that, given the absence of national regulations on the matter, Article 7(1) and (2) of Directive 2003/88/EC was, pursuant to the second paragraph of Article 31(2) of the Charter of Fundamental Rights of the European Union, directly applicable to legal relationships between limited companies and members of their boards of directors, provided that the board member in question fell within the concept of 'worker' within the meaning of that directive.

*Latvijas Republikas Senāta Civillietu departaments, judgment of 22.5.2025, SKC-113/2025, ECLI:LV:AT:2025:0522.C771426723.12.S (**LV**)*

Portugal – Supreme Court

International jurisdiction - Regulation (EU) No 1215/2012 - Motor vehicle - Pollution - Consumer protection

In this judgment, the Supreme Court confirmed that national courts have jurisdiction over class actions brought by consumer associations against foreign companies. In this case, a non-profit consumer protection association had brought a class action before the national courts seeking an order requiring three companies in the Mercedes group, whose registered office is in Germany, to compensate consumers affected by the use of devices designed to manipulate the emission control system in the motor vehicles they had purchased. The defendant companies had raised an objection of lack of jurisdiction based on nationality and subject matter. In their view, jurisdiction should have been determined in accordance with Article 4 of Regulation (EU) No 1215/2012, given that this is an opt-out class action. However, the high court ruled, in line with the judgments handed down by the Court of Justice in the Verein für Konsumenteninformation (C-343/19) and MA (C-81/23) cases, that Article 7(2) of the said regulation must be applied to determine territorial jurisdiction. This provision stipulates that jurisdiction lies with the court of the place where the harmful event occurred or is likely to occur.

*Supremo Tribunal de justiça, decision of 29.4.2025, No 6970/21.8T8LSB-A.L1.S1 (**PT**)*

Germany – Federal Constitutional Court

Defeat devices on diesel engines - Responsibility of car manufacturers

The Federal Constitutional Court dismissed as inadmissible a constitutional appeal against a ruling by the Auxiliary Chamber of the Federal Court of Justice. In that ruling, the Court held, taking into account the Mercedes Benz Group judgment of the Court of Justice (C-100/21) that the tortious liability of car manufacturers for the use of illegal defeat devices could give rise to compensation. The car manufacturer, which, in the main proceedings, had been sued for damages for the alleged use of such devices, had in particular invoked a violation of the right to a lawful judge with regard to the composition of the Auxiliary Chamber, which had been created to deal with such disputes. Furthermore, according to the manufacturer, the Federal Court of Justice did not refer questions to the Court of Justice for a preliminary ruling on the interpretation of EU law that had not yet been answered and for which there was no obvious answer. Furthermore, in the judgment in question, the high court allegedly exceeded the limits of creating law by judicial precedent. However, these claims were dismissed as insufficient in view of the requirements relating to the grounds for constitutional appeals.

*Bundesverfassungsgericht, order of 29.4.2025, 2 BvR 1440/23 **(DE)***
Press release (DE)

Belgium – Court of Cassation

Consumer protection - Unfair terms - Legal action - Allocation of costs

According to the Belgian Judicial Code, costs may be compensated to the extent deemed appropriate by the judge, particularly when the parties are unsuccessful on certain counts.
In proceedings seeking to establish the unfair nature of a contractual term and to set aside its application, the Court of Cassation interpreted this possibility in accordance with Directive 93/13/EEC. Based on the case-law of the Court of Justice, the high court ruled that a judge who partially upholds the claims of both parties must, when assessing costs, verify whether the costs imposed on the consumer would have prevented or deterred them from bringing the action. Thus, such a judge cannot simply order both parties to pay half of the costs without examining whether the costs to be borne by the consumer are proportionate to their partial success.

*Hof van Cassatie, judgment of 2.5.2025, C.24.0131.N **(NL)***

Greece – Council of State

Equal treatment - Participation in the entrance examination for the National School for the Judiciary - Upper age limit

The Council of State, ruling in an extended formation, dismissed the appeal for annulment against an individual decision taken on the basis of Article 17(1)(b) of Law No 4871/2021, which set an age limit of 40 for candidates for the entrance examination to the National School for the Judiciary. The high administrative court ruled that setting 40 as the upper age limit for participating in the competition appears reasonable, based on common experience. It meets the objective pursued by the constitutional legislator, who, by establishing an age limit for magistrates to remain in office (65 for magistrates up to the rank of Councillor or Deputy Public Prosecutor at the Court of Appeal, and 67 for higher grades), intended to encourage magistrates to remain in their careers long enough to enable them to progress professionally to the highest grades of the judicial hierarchy and to offer them the prospect of doing so. The high administrative court also considered that the introduction of an upper age limit for participation in the entrance examinations for the National School for the Judiciary pursues a legitimate objective of general interest within the meaning of Article 6 of Directive 2000/78/EC. The age limit of 40 therefore does not appear to be manifestly inappropriate or disproportionate in relation to the objective pursued. Consequently, the Council of State rejected the request for a referral to the Court of Justice for a preliminary ruling on the grounds that the latter's existing case-law on the interpretation of the provisions of Directive 2000/78/EC already provides sufficient and indisputable clarification on the issues relevant to the case, taking into account the wide margin of discretion available to the national legislator in matters relating to the organisation of the judiciary.

*Symvoulio tis Epikrateias, formation élargie, judgment of 6.5.2025, No 805/2025 ECLI:EL:COS:2025:0505A805.24E1727 **(GR)***

Netherlands – Council of State

Submission of multiple applications for international protection in several Member States - Determination of the Member State responsible

The Council of State ruled on a case concerning Regulation (EU) No 604/2013, applying the case-law established by the Court of Justice in judgments C-323/21, C-324/21 and C-325/21. More specifically, the high court determined the Member State responsible for examining an application for international protection when a third-country national has successively lodged several applications for international protection in three different Member States. In this case, the national concerned had first applied for international protection in Germany, then in Belgium and finally in the Netherlands. The Council of State ruled that Belgium had become responsible for examining the application, given that the deadline for transferring the national concerned from Belgium to Germany had expired on 8 May 2024. In that regard, the fact that the national in question had, in the meantime, lodged a new application for international protection in the Netherlands, which led to Germany accepting a request for readmission under Article 23 of Regulation (EU) No 604/2013, and the fact that the Netherlands was not informed of the expiry of the transfer period until 13 May 2024, were considered irrelevant. According to the case-law of the Court of Justice, a take-back request cannot validly be addressed to the Member State in which the national lodged their initial application after responsibility for examining that application has been transferred to another Member State pursuant to Article 29(2) of Regulation (EU) No 604/2013. Thus, when the Netherlands realised that it was not Germany but Belgium that had become the Member State responsible, a new time limit began to run for the Netherlands, during which it could ask Belgium to take back the national.

Raad van State, decision of 8.5.2025, 2024064951/1/V3 ***(NL)***

Bulgaria - Supreme Administrative Court

Infringement of EU law - Consequences - Nullity of a national court decision on the grounds of an infringement of Article 19 TFEU - No grounds for nullity

In its judgment, the Supreme Administrative Court ruled that a violation of EU law does not constitute valid grounds for declaring a judicial decision null and void, but that the applicant is nevertheless entitled to claim compensation for the damage suffered. In this case, the Bulgarian high court, hearing an appeal concerning the validity of a provision in a legislative act relating to district heating, had, in 2020, closed the proceedings without ruling on the merits, on the grounds that the dispute had become moot due to the subsequent amendment of the disputed provision. The proceedings were closed without the applicant having had the opportunity to express his interest in continuing them with a view to a ruling on the merits of the case. The applicant then lodged an application for the annulment of the 2020 decision on the grounds that it directly infringed Article 19 TFEU, in that the high court had failed to fulfil its obligations under EU law. Furthermore, in his application, he referred to judgment C-289/21, in which the Court of Justice had ruled that the national procedural rule whereby, when a contested provision of domestic law was repealed and ceased to have effect for the future, the dispute must be considered to have lost its purpose, so that there would be no need to rule on it, without the parties having been able to first assert their possible interest in continuing the proceedings, was incompatible with EU law. The high court rejected this request, essentially acknowledging that one of the mechanisms guaranteeing the protection of individual rights is to hold Member States liable for compensation for damage caused in the event of a breach of EU law. However, such protection cannot be invoked to overturn a final and enforceable decision by declaring it null and void. Under Bulgarian law, a court decision can only be declared null and void in the event of a substantial violation of the functioning of the court, for example with regard to its composition, the form of the judgment or the absolute impossibility of understanding the intention expressed therein.

Върховен административен съд(Varhoven administratien sad), judgment of 15.5.2025, No 5029 ***(BG)***

France – Council of State

Principle of sincere cooperation - Automatic relief or refund of undue taxation - Definitive rejection of a claim based on an erroneous interpretation of EU law

The Council of State ruled that the refusal to review the taxpayer's situation, on the basis of Article R.211-1 of the Book of Tax Procedures, and, where applicable, to pay default interest, is, under certain conditions, subject to appeal before the administrative court when this refusal has become definitive as a result of a final court decision based on an erroneous interpretation of EU law. After reviewing the case-law of the Court of Justice, the taxpayer concerned should have asked the tax authorities to re-examine their situation in order to take account of the Court's interpretation adopted in the meantime. Thus, in such a case, as the decision taken by the administration cannot be regarded as being of a discretionary nature, the relief or refunds granted must give rise to the payment of default interest.

*Conseil d'État, decision of 19.5.2025, No 491417 **(FR)***

Romania – High Court of Cassation and Justice

Irregularities concerning European funds - Compensation for damages - Refusal or withdrawal limited to funding granted for areas affected by irregularities

The High Court of Cassation and Justice ruled that compensation for damage caused by irregularities concerning European funds that are the subject of civil proceedings in criminal trials only results in the refusal or withdrawal of the amounts in respect of which the irregularities were found. In this regard, the high court relied on the ANAS judgment of the Court of Justice (C-545/21), which specified in particular that corrections relating to irregularities consist of cancelling all or part of the public contribution to an operational programme.

*Înalta Curte de Justiție și Casație, judgment of 19.5.2025, No 190 **(RO)***

Netherlands – Council of State

Family reunification - Time limit for adopting a decision on an application for a temporary residence permit to enter the national territory

The Council of State ruled that the 'first in, first out' method applied by the Ministry of Asylum and Migration, which implies that applications for family reunification are processed by the administrative authority in the order in which they are received, does not allow the administrative judge to grant the minister an extended period of time to make a decision on these applications or to impose a lower penalty payment in the event of non-compliance with these deadlines. In this context, the Council of State considered, among other things, that a longer separation of family members compromises the effectiveness of Directive 2003/86/EC and substantially affects the right to family life and the rights of children enshrined in the Charter of Fundamental Rights of the European Union.

*Raad van State, decision of 21.5.2025, 202405046/1/V1 **(NL)***
Press release (NL)

Finland – Supreme Administrative Court

Social policy - Protection of the safety and health of workers - Directives 89/391/EEC and 2003/88/EC - Meal delivery drivers

Following an appeal lodged by the occupational health and safety authority, the Supreme Administrative Court was called upon to determine whether the said authority could oblige a company offering a meal delivery service to keep records of working time showing all the hours worked by the delivery drivers employed by the said company, as well as the remuneration paid. Firstly, in order to determine whether the delivery drivers were working under an employment relationship or as self-employed contractors, the high court relied on the relevant legislation, taking into account Directive 89/391/EEC and, in particular, the case-law of the Court of Justice, according to which the concept of worker must not be interpreted restrictively. Although the work of delivery drivers has many characteristics generally associated with self-employed contractors, the Supreme Administrative Court considered that, in reality, all the characteristics of an employment relationship were present. In this regard, it took into account, in particular, the subordinate position of the delivery drivers vis-à-vis the company, the requirement imposed by the latter to have entered into a service contract that it had drafted itself, and the manner in which it could control and supervise their professional performance. Therefore, delivery drivers should be considered as working within the framework of an employment relationship. Secondly, the high court considered whether the law on working time, transposing Directive 2003/88/EC, applied to delivery drivers. In this context, it noted in particular that the total working time of delivery drivers was not predetermined and that they enjoyed autonomy in terms of working time. Consequently, the high court concluded that the law on working time did not apply to them.

*Korkein hallinto-oikeus, decision of 22.5.2025, ECLI:FI:KHO:2025:41 (**FI**)/(**SV**)*

Portugal – Constitutional Court

Right to life - Active assistance in dying - Fundamental right to individual liberty - Self-determination.

The Constitutional Court was called upon to rule on the constitutionality of Law No 22/2023. It stated that active assistance in dying is not prohibited by the Constitution, insofar as it is justified by the fundamental right to individual liberty. The high court clarified that individuals' rights to personal development and self-determination limit the State's duty to protect life. However, it also emphasised that there is no fundamental right to die and that access to active assistance in dying must be limited strictly to situations in which refusing it would undermine human dignity. In this context, it is up to the legislator to strike a balance between the duty to protect life and the duty to respect individual self-determination, particularly in cases involving severe and irreversible suffering. Furthermore, the Constitutional Court declared several provisions of the law unconstitutional due to legal uncertainty and lack of clarity. It invalidated provisions requiring healthcare professionals to justify their opposition to participating in active assisted dying procedures, ruling that this was an excessive restriction on their freedom of thought and conscience. It also ruled that the provision requiring the involvement of a medical specialist in the relevant field was unconstitutional, considering that it did not provide sufficient protection for human life.

*Tribunal Constitucional, judgment of 25.5.2025, No 307/2025 (**PT**)*

Italy – Constitutional Court

Medically assisted reproduction - Principle of equality - Best interests of the child

In its ruling of 28 May 2025, the Constitutional Court declared unconstitutional Article 8 of Law No 40 of 19 February 2004 on medically assisted reproduction (MAR), which does not provide for the possibility of a child born as part of an MAR project carried out by a female couple abroad to also be recognised by the 'intended' mother. The high court specified that this case concerns a matter affected by constitutional principles and obligations arising from the European Convention on Human Rights and the Charter of Fundamental Rights of the European Union, in particular Article 24(3) thereof. In this regard, it considered that the unjustified unequal treatment of children conceived through heterologous fertilisation by a homosexual couple, which does not allow for the establishment of a legal relationship with both parents, unlike those conceived by a heterosexual couple, constitutes a violation of the best interests of the child.

*Corte Costituzionale, judgment of 28.5.2025, No 68/2025 (**IT**)*

Romania – Constitutional Court

Declaration of financial interests of persons holding public office or elected office - Situation of spouses and dependent adult children - Publication of declarations - Unconstitutionality

The Constitutional Court censured several legislative provisions relating to the financial disclosure requirements imposed on certain categories of persons holding public or elected office. In this regard, the high court emphasised, firstly, that provisions requiring a person to declare both their own income and that of their spouse and dependent adult children are incompatible with the Constitution, given that they allow the declarant to be held criminally liable for information that they do not possess or of which they are not directly aware. Secondly, it pointed out that the right to privacy and the right to the protection of personal data preclude the publication of such statements on the website of the institution in which the person exercises their mandate or functions or on the website of the National Integrity Agency. However, simply submitting these declarations to this Agency, without publication, is considered sufficient in terms of the objectives of combating corruption.

Curtea Constituțională, decision of 29.5.2025, No 297/2025 ***(RO)***
Press release **(RO)**

Portugal – Supreme Administrative Court

Official sporting competition - Nationality - European Union

In its ruling, the Supreme Administrative Court dismissed the appeal lodged by the Portuguese Padel Federation ('the FPP') and upheld the judgment handed down by the Central Administrative Court of the South. The latter had ruled that the FPP's refusal to award the national championship title to the winning pair in the national padel championship, on the grounds that one of the two participants was not a Portuguese national but a national of another Member State, violated the principle of non-discrimination enshrined in Article 18 TFEU, as well as the case-law established by the Court of Justice, in particular in the TopFit and Biffi judgment (C-22/18). In addition, the high court also concluded that awarding the title to the pair ranked second constituted a violation of the principle of sporting integrity.

Supremo Tribunal Administrativo, decision of 29.5.2025, No 020/22.4BCLSB ***(PT)***

Quick information

Spain – Constitutional Court

Constitutional appeal - Amnesty law - Preliminary ruling - Principle of equality before the law

The Constitutional Court declared Organic Law 1/2024 on amnesty to be in accordance with the Spanish Constitution, subject to certain reservations. On the one hand, it refused to refer the matter to the Court of Justice for a preliminary ruling, stating that the review of the applicability of a law in terms of its compliance with EU law must precede the review of its constitutionality. On the other hand, it ruled that the absence of express constitutional authorisation for the granting of amnesty cannot be interpreted as a prohibition, especially since there is no constitutional provision to the contrary. Furthermore, this law responds to extraordinary circumstances, as it is part of the specific context of the Catalan secessionist movement, and serves a legitimate, explicit and reasonable purpose, which is to reduce institutional and political tensions and facilitate reconciliation. That being said, the high court first declared Article 1(1) of the Amnesty Law unconstitutional, insofar as it was not compatible with the principle of equality before the law, since it did not grant amnesty for conduct aimed at rejecting the independence movement in Catalonia. This article should therefore be interpreted as meaning that acts aimed at rejecting the Catalan independence movement should also be amnestied, provided that they meet the conditions laid down by law. It then stated that the second paragraph of Article 1(3) of that law was unconstitutional in that it extended the amnesty to acts committed after the adoption of the law. Finally, it ruled that Article 13(2) and (3) of the Law were not unconstitutional insofar as they allowed all parties to the proceedings before the Tribunal de Cuentas (Court of Auditors) to be heard.

Tribunal Constitucional, judgment of 26.6.2025, No 6436-2024 ***(ES)***
Press release (ES)/(EN)

Previous decisions

Romania – Bacău Court of Appeal

European arrest warrant - Incidental recognition of a decision rendered in another State - Optional grounds for refusal to execute

In the context of the execution of European arrest warrants issued against a Romanian citizen residing in Romania following his release in 2019, Bacău Court of Appeal recognised the convictions handed down by the Italian courts and ordered the sentence to be served in a prison in Romania. It accepted the request of the person concerned to serve their sentence in Romania, considering that an optional ground for refusal was applicable to them. Furthermore, it specified that serving the sentence in Romania would facilitate the convicted person's reintegration.

*Curtea de Apel Bacău, criminal judgment of 20.3.2025, No 25 (**RO**)*

Greece – Council of State

Public procurement - Exclusion of a tenderer - Appeal procedures - Interest in bringing proceedings on the part of the unsuccessful tenderer who submitted a tender unrelated to the subject matter of the contract

On the grounds of lack of interest in bringing proceedings, the Council of State dismissed the application for annulment brought by an unsuccessful competitor against the decision of the Greek public procurement authority, whereby that authority had rejected the technical bid of the applicant company and accepted that of another economic operator. The high administrative court considered that an economic operator who had participated in the tender procedure by submitting a bid that was completely unrelated to the subject matter of the contract could not claim a legitimate interest in challenging a competitor's bid. If the procedure were to be cancelled, the only prospect of participating effectively in any new tender procedure for a supply contract with the same essential characteristics as the one in question would not involve simply correcting its initial tender in relation to certain missing technical specifications or requirements in the contract notice, but rather the submission of an entirely different tender, essentially corresponding to the material subject matter of the contract in question. The participation of this economic operator in the procedure and its desire to have it annulled therefore appear to be abusive and, consequently, unworthy of judicial protection. In this regard, the Council of State ruled, without referring a question to the Court of Justice for a preliminary ruling, that the latter's case-law, according to which an economic operator who has not been definitively excluded from a procurement procedure by a decision that has become final retains an interest in bringing proceedings to seek annulment on the grounds of irregularities affecting the tenders of its competitors, since it can legitimately expect the procedure to be annulled and subsequently restarted (judgments C-131/16 and C-771/19), cannot apply in the case of an operator offering a product that does not even correspond to the concept of the material subject matter of the contract. It follows that the aforementioned case-law of the Court of Justice cannot be applied in the present case.

*Symvoulio tis Epikrateias, judgment of 31.3.2025, No 539/2025 ECLI:EL:COS:2025:0331A539.24E1928 (**GR**)*