



## FLASH NEWS

6/25

# NATIONAL DECISIONS OF INTEREST TO THE EU

## OVERVIEW FOR OCTOBER – NOVEMBER



### Austria – Constitutional Court

#### ***Fundamental rights - Right to privacy - Prohibition on the removal and freezing of oocytes without medical indication***

The Constitutional Court ruled that the absolute ban on the retrieval and freezing of oocytes without medical indication ('social egg freezing') introduced by the Austrian law on medically assisted reproduction (Article 2b(1) of the Fortpflanzungsmedizingesetz) was unconstitutional. The high court found that the desire to use medically assisted reproduction methods falls within the scope of the right to respect for private and family life, within the meaning of Article 8 of the European Convention on Human Rights. However, the absolute prohibition introduced by the national provision in question constitutes a disproportionate interference with this fundamental right. Any social or professional pressure exerted on women is not sufficient reason to justify a blanket ban.

Verfassungsgerichtshof, [judgment of 6.10.2025, G 52/2024-29 \(DE\)](#)

[Press release \(DE\)](#)



### Italy – Court of Cassation

#### ***Judicial cooperation in criminal matters - European Arrest Warrant - Execution - Surrender - Genuine settlement***

In its judgment, the Court of Cassation, by dismissing the appeal lodged by a Polish national against a European Arrest Warrant issued by France, reaffirmed the legitimacy of surrender when the conviction is enforceable, even if it is not final. Framework Decision 2002/584 makes the execution of a warrant conditional upon the enforcement of the criminal judgment and not upon its finality. In this context, the high court also reiterated the interpretation that genuine roots in Italian territory are excluded in cases of mere frequent visits to that territory. In this case, the applicant lived, worked and carried out her activities in France, where she had committed the offences in question over a period of eight years and where she had her centre of interests and her main residence.

Corte di cassazione, [judgment of 7.10.2025, No 33387 \(IT\)](#)



### Estonia – Supreme Court

#### ***Criminal law - Protection of the confidentiality of communications between a suspect and his or her lawyer - Right to privacy***

In its order, the Supreme Court ruled that the lower courts had correctly answered in the affirmative the question of whether the interception of lawyers' telephone conversations in the course of their legal assistance work had infringed their right to privacy. To this end, the high court interpreted the relevant provisions of the Constitution and the relevant regulations in the light of the case-law of the European Court of Human Rights (judgments in [Niemietz v. Germany](#) and [Angerjäv and Greinoman v. Estonia](#)) and the Court of justice (judgment in [C-450/06](#)), according to which it is not always possible to draw a clear distinction between professional and private life, particularly when, for some individuals, their professional activity constitutes an important part of their private life. Furthermore, it reiterated the principle enshrined in Directive 2013/48/EU, according to which the confidentiality of communications between clients and their lawyers contributes, more generally, to the proper functioning of the judicial system. Member States must therefore respect the confidentiality of telephone conversations between suspects or accused persons and their lawyers in the context of exercising the right of access to a lawyer provided for in this directive, except where there are reasons to suspect that the lawyer has participated in the commission of an offence.

Riigikohus, [order of 10.10.2025, No 1-24-7248/21 \(ET\)](#)



## Portugal – Supreme Court

### ***International jurisdiction - Regulation (EU) No 1215/2012 - Airline - Non-contractual liability - Anti-competitive conduct - Consumer protection***

In this judgment, the Supreme Court overturned the contested decision and declared that the Portuguese courts had jurisdiction to rule on the action in question. In this case, a consumer rights association had brought an action against RYNAIR DAC, seeking an order requiring the latter to pay compensation for the damage caused by its anti-competitive practices. The high court noted that, in this case, non-contractual civil liability was at issue. In this regard, it found that the harmful event occurred when the airline misleadingly published its flight fares on its website without including essential and foreseeable elements. It further considered that consumers had been misled as to the actual price of the air transport services and that Article 18 of Regulation No 1215/2012 was not applicable, but rather Article 7(2). Having carried out this initial analysis, the Supreme Court agreed with the Court of Justice's interpretation of the concept of 'the place where the harmful event occurred or may occur', considering that the harmful event occurred when the consumers represented in the action contracted with the defendant airline for air transport services at an unfavourable price due to non-compliance with competition rules. As the harmful event took place in Portugal, the Portuguese courts therefore had jurisdiction.

*Supremo Tribunal de justiça, judgment [of 14.10.2025, No 5598/22.0T8VNG.LI.SI \(PT\)](#)*



## Portugal – Supreme Administrative Court

### ***Taxation - Prevention of double taxation - Withholding tax - Non-resident company - Deadline for requesting dividend refunds***

The Supreme Administrative Court dismissed the appeal lodged by a Dutch company, which argued that setting a time limit for requesting the repayment of dividends received was contrary to the provisions of Directive 90/435/EEC, which was in force at the time of the events. In this context, the high court recalled, based on the case-law of the Court of Justice ([C-194/06](#)), that, in the absence of unification or harmonisation measures, Member States are entitled to define, by agreement or unilaterally, the criteria for allocating their taxing powers, with a view, in particular, to eliminating double taxation.

*Supremo Tribunal Administrativo, [judgment of 15.10.2025, No 0102/14.6BEPRT \(PT\)](#)*



## Spain – Supreme Court

### ***Area of freedom, security and justice - Judicial cooperation in criminal matters - European Investigation Order***

The Supreme Court, relying on Directive 2014/41/EU and the judgment of 30 April 2024, M.N., of the Court of Justice ([C-670/22](#)), examined the legality and probative value of messages intercepted via the EncroChat system by the French authorities, pursuant to a judicial authorisation, using 'Trojan horse' software. The data obtained were shared by Eurojust with other Member States, including Spain, through a European Investigation Order (EIO). In Spain, this information was used in various criminal proceedings relating to drug trafficking and criminal organisations. In its judgment, the high court distinguished between the EIO for gathering new evidence and that for transmitting existing evidence, and considered that, in the case before it, the Spanish order was solely concerned with the transmission of data already obtained by France, which justified limited control on the part of the issuing State. Furthermore, it considered, on the one hand, that even though France had not formally notified the States concerned of the intervention, this procedural omission did not automatically render it null and void, and, on the other hand, that the criteria established by the European Court of Human Rights regarding access to data, adversarial proceedings and equality of arms should also be taken into account.

*Tribunal Supremo, [judgment of 16.10.2025, No 854/2025 \(ES\)](#)*



## France – Council of State

### ***European Parliament - Members - Mandate - Disqualification - Conditions***

Following a referral by an individual in his capacity as an elector, the Council of State ruled that the forfeiture of the mandate of a Member of the European Parliament following his conviction and disqualification from standing for election can only result from a conviction that has become final. The high court noted that the French legislature intended to apply the same rules on ineligibility to Members of the European Parliament as those applicable to French parliamentarians. Consequently, the Council of State ruled that Nicolas Bay and Catherine Griset, who had appealed against their sentences of ineligibility with provisional enforcement handed down by the Paris Court of Justice on 31 March 2025, could retain their seats as MEPs.

*Conseil d'État, [decision of 17.10.2025, 7th-2nd joint chambers, No 505689 \(FR\)](#)  
[Press release](#)*

 **Luxembourg – District Court*****Criminal law - Banking sector - Conviction of executives***

In a settlement agreement, the Luxembourg District Court sentenced three former executives of the Icelandic bank Kaupthing Bank Luxembourg S.A., which went bankrupt in 2008, to a financial penalty of EUR 75 000 in the form of confiscation or a fine. Shortly before the bank went bankrupt, several transactions had given rise to suspicions of forgery, use of forged documents, misuse of company assets and money laundering. After more than 14 years of proceedings and cooperation between the Luxembourg and Icelandic authorities, the three defendants agreed to plead guilty.

*Tribunal d'arrondissement, judgment of 22.10.2025, (not available)*

[Press release \(FR\)](#)

 **Greece – Council of State*****Freedom of establishment – Higher education institutions – Creation of foreign university departments – Interpretation in accordance with the Constitution***

The plenary session of the Council of State rejected three appeals for annulment against a ministerial decree authorising the establishment and operation in Greece of departments of foreign universities from other European Union countries or third countries party to the General Agreement on Trade in Services, in the form of collaboration with Greek non-profit educational institutions. The Greek Constitution stipulates that higher education shall be provided exclusively by legal persons governed by public law. However, it follows from the case-law of the Court of Justice that education is not a field excluded from the application of fundamental freedoms. Thus, interpreting these constitutional provisions in the light of EU law, the high court ruled that an absolute ban on the establishment of private universities is not compatible with the freedom of establishment guaranteed by Article 49 TFEU, the freedom to establish educational institutions provided for in Article 14(3) of the Charter, or the principle of proportionality. Furthermore, the Council of State decided not to refer any questions for a preliminary ruling in this regard, considering that the case-law of the Court of Justice already answered all the questions raised.

*Symvoulío tis Epikrateias, Olomeleia, judgments of 24.10.2025, No 1918-20/2025, [\[Summary in EL\]](#) (judgments available on request)*

 **Latvia – Constitutional Court*****Manufacture, presentation and sale of tobacco products - Directive 2014/40/EU - Nicotine pouches***

The Constitutional Court ruled that national legal provisions imposing restrictions on the composition of electronic devices used for smoking and tobacco substitutes (tobacco-free nicotine pouches) are in line with the Constitution. In this instance, the case concerned the ban on adding flavours that do not have the smell or taste of tobacco and certain additives that facilitate the inhalation or absorption of nicotine to the composition of these electronic devices, as well as the maximum nicotine concentration permitted in tobacco-free nicotine pouches and the ban on adding flavours to them. On the one hand, the high court found that Directive 2014/40/EU does not regulate issues related to tobacco-free nicotine pouches. However, in accordance with this directive, the liquid containing nicotine that is used in electronic cigarettes must not contain any additives that facilitate the inhalation or absorption of nicotine, while the regulation of flavourings in electronic cigarette liquids is left to the discretion of the Member States. On the other hand, it stressed that nicotine is one of the most powerful addictive substances known and poses serious health risks. In view of the increase in the consumption of electronic cigarettes and tobacco-free nicotine pouches, the requirements relating to their composition laid down in the contested provisions should be regarded as a means of reducing the appeal of these products to the public, in particular to young people. These requirements would reduce the potential risks of nicotine addiction, the future burden on the public health system, and the risks of disease for future generations. The contested standards would therefore strike a fair balance between restricting the property rights of traders and protecting public health. The legitimate interests of certain traders should not take precedence over the interests of society as a whole.

*Latvijas Republikas Satversmes tiesa, judgment of 24.10.2025, 2024-16-01 (LV)*

## Latvia – Supreme Court

### **Medicinal products for human use - Directive 2001/83/EC - Advertising of medicinal products**

In its judgment, the Supreme Court was required to determine whether information on the use of various medicinal products provided in interviews published in a health magazine could be considered advertising for those medicinal products. In the disputed interviews, healthcare professionals and public figures had made general recommendations on the use of specific medicinal products and had made statements praising the effectiveness of these medicinal products in treating specific diseases or health conditions. The high court noted that, although the term ‘intention’ is used in the Latvian version of Article 86(1) of Directive 2001/83/EC, this term is not used in its usual sense in the Latvian legal system. This term does not appear in the versions written in the other official languages of the European Union. It therefore considered that it was not necessary to assess the motivation or intention of the person concerned, but rather the objective characteristics of the information contained in the declaration. The Supreme Court therefore concluded that the restrictions were defined in sufficiently clear legal standards, that there was no reason to consider that the magazine publisher could not have foreseen that its action would constitute a violation of those standards, that the standards had a legitimate aim, and that the restriction on the right to freedom of expression was proportionate.

*Latvijas Republikas Senāta Administratīvo lietu departaments, [judgment of 28.10.2025, SKA-110/2025, ECLI:LV:AT:2025:1028.A420306619.14.S \(LV\)](#)  
[Press release \(LV\)](#)*

## Spain – Supreme Court

### **Consumer protection - Directive 93/13/EEC - Criteria for assessing the unfairness of a contractual term**

The Supreme Court reiterated its case-law, according to which the criterion of the importance of the information provided by the professional to the consumer on the latest available value of the benchmark index for mortgage loans evolved in the judgment of 3 March 2020 ([C-125/18](#)) and in the orders of 17 November 2021, Gómez del Moral Guasch II ([C-655/20](#)) and Unión de Créditos Inmobiliarios ([C-79/21](#)). In its reasoning, the high court also relied on the judgment of 12 December 2024 in Kutxabank ([C-300/23](#)), and linked the transparency check to the requirement that information on the definition and values of this index must be sufficiently accessible to the average consumer. It stated that, although this accessibility may be achieved through the guidance provided by the professional for this purpose, such guidance is not the only possible source of information; consequently, the publication of the index in the State Gazette satisfies the transparency requirement, provided that the entity informs the consumer.

*Tribunal Supremo, [judgment No 1590/2025, of 11.11.2025 \(ES\)](#)*

## Poland – Supreme Court

### **Consumer protection - Unfair terms - Mortgage loan indexed to a foreign currency - ‘Two claims’ theory**

The Supreme Court, referring to its decision of 5 September 2025 (II CSKP 550/24), ruled on the ‘two-claims’ theory, which has been widely debated in Poland, in the light of the judgment of the Court of Justice of 19 June 2025 in Lubreczlik ([C-396/24](#)), as well as on the principle of the primacy of EU law. In its decision of 5 September 2025, the high court accepted this theory, ruling that if, in the context of the performance of a credit agreement that has been cancelled due to the unfair nature of its terms, the bank has paid the consumer all or part of the credit and the consumer has made repayments, independent rights to the restitution of the undue payment arise in favour of each of the parties. In its order of 20 November 2025, concurring with this assessment, the Supreme Court found that it was not necessary to examine the relevance of departing from this theory, as its application in favour of the consumer is not contrary to Article 7(1) of Directive 93/13/EEC, given the interpretation adopted in the judgment of the Court of Justice of 19 June 2025 in Lubreczlik ([C-396/24](#)).

*Sąd Najwyższy, [order of 20.11.2025, I CSK 2765/25 \(PL\)](#)*

## Poland – Supreme Administrative Court

### **Respect for the principle of judicial independence - Judges appointed by the President of the Republic on the recommendation of the Judicial Council following the 2017 reform**

The Supreme Administrative Court, when considering an appeal on a point of law, found no grounds for declaring the proceedings invalid on the basis that a judge appointed to his post on the recommendation of the National Council of the Judiciary (‘the KRS’), as constituted following the 2017 reform, had sat on the court hearing the case. Referring to the case-law of the Court of Justice, in particular the judgments of 15 July 2021, Commission v Poland (Régime disciplinaire des juges) ([C-791/19](#)) and of 7 November 2024, Prezes Urzędu Ochrony Konkurencji i Konsumentów ([C-326/23](#)), the appellant raised such an objection, stating that a judge appointed by the KRS was not authorised to sit on the provincial administrative court.

*Naczelny Sąd Administracyjny, [order of 18.11.2025, III OSK 593/25 \(PL\)](#)*



### Netherlands – Supreme Court

#### **Equal treatment - Directive 2008/104/EC - Provision 'on a temporary basis' - Abuse of rights**

In its ruling, the Supreme Court found that a company's general need for a flexible workforce does not constitute sufficient justification for the continuous use of a temporary worker for 13 years on the basis of successive interim employment contracts. In this regard, the High Court noted that it follows from the judgment of the Court of Justice in Daimler ([C-232/20](#)) that the assignment of successive tasks to a temporary worker constitutes an abuse of the system when the duration of that worker's activity in the user company exceeds what can reasonably be described as 'temporary', having regard to all the relevant circumstances, without any objective explanation being given to justify the actual duration of the assignment. Thus, the Supreme Court ruled that the user company's argument regarding the need for a flexible workforce did not constitute an objective explanation, as it had clearly demonstrated its ongoing need to use the services of the temporary worker concerned.

Hoge Raad, [decision of 21.11.2025, 24/03307 \(NL\)](#)



### Sweden – Supreme Administrative Court

#### **Taxation - Value added tax - Directive 2006/112/EC - Reduced rate applicable to the right to use sports facilities - Virtual reality activities - Exclusion**

The dispute centred on whether 'virtual reality' activities, i.e. games in which users interact with a digital environment in real time using simulation technology, can benefit from the reduced VAT rate applicable to the right to use sports facilities, as provided for in Article 98 and Annex III, point 13, of Directive 2006/112/EC. Referring in particular to the judgment of the Court of Justice in the Baštová case ([C-432/15](#)), the Supreme Administrative Court held that the assessment to determine this must, in particular, take into account the design of the installation. Given that physical activity appears to be negligible in virtual reality activities, which is also reflected in the design of the facilities, the high court ruled that such activities were more akin to entertainment than sport and therefore could not benefit from the reduced rate.

Högsta förvaltningsdomstolen, [judgment of 21.11.2025, No 3024-25 \(SV\)](#)

## Previous decisions



### Poland – Supreme Court

#### **Respect for the principle of judicial independence - Judges appointed by the President of the Republic on the recommendation of the Judicial Council following the 2017 reform**

On 24 September 2025, the Supreme Court adopted a resolution (III PZP 1/25) having the force of law. Referring to the case-law of the Court of Justice, in particular the judgment of 19 November 2019 on the independence of the Disciplinary Chamber of the Supreme Court (Joined Cases [C-585/18, C-624/18 et C-625/18](#)), the high court reiterated that a decision following an extraordinary appeal (skarga nadzwyczajna), examined by the Extraordinary Control and Public Affairs Chamber of the Supreme Court, ruling in a composition that does not meet the requirements of the second subparagraph of Article 19(1) TEU, namely in the presence of at least one judge appointed to his or her post on the proposal of the National Council of the Judiciary ('the KRS'), as constituted after the 2017 reform, must be considered null and void (non-existent). Consequently, the court to which the case has been referred for reconsideration is obliged to regard the decision of that Chamber as null and void. In accordance with the resolution cited, this court has jurisdiction to hear this appeal itself, in accordance with the principles set out in the aforementioned judgment of the Court of Justice.

Sąd Najwyższy, [resolution of 24.9.2025, adopted by seven judges of the Supreme Court, III PZP 1/25 \(PL\)](#)



### Romania – Oradea Court of Appeal

#### **European Union funds - Fraud - Obtaining undue sums - Forgery of a signature with no direct impact on obtaining the funds**

Several individuals were prosecuted for the offence of using or presenting, in bad faith, false, inaccurate or incomplete documents or statements, with the result that they obtained undue funds from the general budget of the Union or from budgets managed by the Union or on its behalf. The Oradea Court of Appeal held that this offence requires the obtaining of such undue funds, specifying that the 'undue' nature of the funds is one of the constituent elements of the offence, implying that the funds are obtained by fraud. In this case, the court ruled that the forgery of a signature had not substantially affected the right to receive payment, but that it constituted a non-essential procedural defect, given that the forgery had not directly determined the receipt of the funds.

Curtea de Apel Oradea, criminal decision No 650, of 1.9.2025 (RO) [the link to the text of the decision is not available]