COURT OF JUSTICE
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Flash News - 3/26

National decisions of interest to the EU

Overview of the months of April and May 2026

Research and Documentation Directorate

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I. Citizenship of the Union - Discrimination on grounds of nationality

Cyprus – Supreme Court

Citizenship of the Union — Prohibition of discrimination on grounds of nationality — Bilateral agreement between Poland and Cyprus — Accession of both countries to the European Union

In this case, the Supreme Court upheld the dismissal of the claim for compensation brought by a Polish national against the Republic of Cyprus, seeking redress for the financial losses she allegedly suffered as a result of the 2013 haircut on the deposits she held with a Cypriot bank. This claim was based on a bilateral investment treaty concluded between Poland and Cyprus prior to their accession to the European Union.

The Supreme Court held that awarding compensation on the basis of that agreement would have the effect of granting Polish nationals more favourable treatment than that accorded to nationals of other Member States affected by the same measures, in breach of the principle of non-discrimination on grounds of nationality, as enshrined in Article 18 TFEU. Drawing on the case-law of the Court of Justice, it therefore concluded that the agreement in question had become inapplicable and void following the accession of the two States in question to the Union.

Anotato Dikastirio, judgment of 29.4.2026, No 344/2017 (**EL**)

II. Agriculture and fisheries

Latvia - Constitutional Court

Common Agricultural Policy — Support for rural development — Micro-reserves in forested areas — Amount of aid — Regulation (EU) No 1305/2013

The Constitutional Court ruled that the amount of aid granted in respect of restrictions on forestry activities in micro-reserves is in accordance with the Constitution. The contested provisions provide for aid intended to compensate for the restrictions imposed on forestry activities in micro-reserves, to be paid from European Union funds. In this regard, it specified that the existing aid scheme is designed in such a way that aid is granted on a long-term basis and that its purpose is not to cover the loss of income, which is calculated individually for each forest owner. In this context, it is also possible to set an aid amount that is not calculated on an individual basis but is based on average indicators of loss of earnings. In this case, the amount of the aid is determined on the basis of objective and rational considerations and is not manifestly disproportionate.

However, in assessing compliance with the principle of equality before the law, the Constitutional Court concluded that, in this particular case, the Council of Ministers was not obliged to provide for such differentiated treatment in order to take account of the individual circumstances of each forest owner.

Latvijas Republikas Satversmes tiesa, judgment of 10.4.2026, No 2025-09-03 (**LV**)

III. Border controls, asylum and immigration

Greece – Council of State

Withdrawal of refugee status — Right of access to information — Principle of non-refoulement — Directives 2008/115/EC and 2013/32/EU

In the context of an action for annulment against a decision which had upheld the withdrawal of the applicant's refugee status on grounds of national security and ordered his return through voluntary departure, the Council of State ruled on the scope of the restrictions on access to the information contained in the file relating to that withdrawal.

That court held that national provisions allowing, in exceptional circumstances, for such access to be restricted are compatible with Directive 2013/32/EU, provided that the restriction is not an absolute ban and that a balancing test is carried out between, on the one hand, the rights of the defence and, on the other, national security requirements.

Furthermore, the Council of State clarified that, where a decision to withdraw refugee status is combined with a return decision, the principle of non-refoulement must be respected at all stages of the return procedure. It emphasised that the administrative authority and the appeal bodies are required, when enforcing a return decision, to verify on a case-by-case basis and using up-to-date information that there is no risk of inhuman or degrading treatment in the country of destination, in order to comply with Directive 2008/115/EC. Having made these clarifications, the Council of State referred the case to its Fourth Chamber for further consideration.

Symvoulio tis Epikrateias, decision of 21.4.2026, No 535/2026 (decision available on request)

IV. Judicial cooperation in civil matters - Rome II Regulation

Czech Republic – Supreme Court

Judicial cooperation in civil matters — Rome II Regulation — Compensation for non-pecuniary damage — Origin of a victim

In this judgment, the Supreme Court dismissed the appeal in cassation brought by the applicant, a German national, concerning compensation for the personal injury he sustained in a railway accident that occurred in the Czech Republic.

Stating that the substantive law applicable in this case is that of the Czech Republic, in accordance with Regulation (EC) No 864/2007 (Rome II), the Supreme Court rejected the applicant's argument that the fact that the victim resides abroad and the standard of living there is different could constitute relevant criteria for determining the amount of compensation for the non-pecuniary damage suffered. It held that compensation for non-pecuniary damage arising from an injury to physical integrity is intended to compensate for the pain suffered and the permanent after-effects, unlike compensation for actual financial loss, where the amount, once proven, depends on the victim's financial circumstances. The Supreme Court therefore held that taking into account the victim's standard of living and economic circumstances would lead to unacceptable inequality between victims and would, consequently, be contrary to the principles of legitimate expectations and equality.

Nejvyšší soud, judgment of 18.3.2026, No 25 Cdo 2454/2025 (**CS**)

Press release (**CS**)

V. Competition

Portugal – Supreme Administrative Court

State aid — Limitation period — Principle of primacy — Regulation (EU) 2015/1589 — Decision (EU) 2022/1414

The Supreme Administrative Court was called upon to rule on an application for review concerning the recovery of unlawful State aid granted under the aid scheme implemented by Portugal in favour of the Madeira Free Trade Zone (MFTZ). The case concerned the limitation period applicable to the recovery of a tax debt arising from the recovery of State aid in the form of a reduction in corporation tax for the year 2012. The Supreme Administrative Court had to determine whether the limitation period provided for under national law (Articles 48 and 49 of the Lei Geral Tributária - the General Tax Law, namely eight years) should be set aside in favour of the 10-year period laid down in Article 17 of Regulation (EU) 2015/1589, which sets the time frame within which the Commission may require the recovery of unlawful State aid.

The Supreme Administrative Court reiterated that Decision (EU) 2022/1414 requires Member States to ensure the immediate and effective recovery of aid deemed incompatible, and that the principle of the primacy of EU law obliges national courts to give priority to the application of EU law. It also referred to the case-law of the Court of Justice, which holds that national limitation rules cannot prevent the recovery of unlawful aid, even if the limitation period under national law had expired before the Commission's decision was adopted.

On this basis, the Supreme Administrative Court concluded that the debt in question was not time-barred, as the 10-year limitation period provided for in the regulation was still running at the time of the Commission's decision (4 December 2020) and had been interrupted by the enforcement measures taken by the Portuguese tax authority. It therefore rejected the applicant's argument that the debt had become time-barred as at 31 December 2020, and consequently set aside the judgment of the Central Administrative Court, which had applied the limitation period under national law.

Supremo Tribunal Administrativo, judgment of 8.4.2026, No 0249/25.3BEFUN.SA1 (**PT**)

VI. Taxation - Value added tax

Sweden – Supreme Administrative Court

Value added tax — Exemptions for certain activities in the public interest — Services provided to members of an independent group of persons

This case concerns the interpretation of Article 132(1)(f) of the VAT Directive, which exempts from VAT services supplied by an independent group of persons. The non-profit organisation for adult education (Studieförbundet Vuxenskolan Riksorganisationen) was involved in activities focused on public education. This activity was funded by government grants and was therefore exempt from VAT, or constituted an activity for which organisations were not liable for VAT. However, 10 of its local entities also offered external training courses, which were subject to VAT. The organisation provided services to local authorities in the areas of accounting, payroll administration, human resources and IT. The question was whether these services, which were not specific to the public-interest activities carried out by the group's members but were of a more general nature, were also exempt from VAT. Consequently, the Supreme Administrative

Court had decided to refer a question for a preliminary ruling to the Court of Justice (T-558/24). However, following the judgment in Agrupació de Neteja Sanitària and Educat Serveis Auxiliars (C-379/24 and C-380/24), this request was withdrawn. The Supreme Administrative Court held that this judgment confirmed that such activities could be exempt from VAT.

Högsta förvaltningsdomstolen, judgment of 11.5.2026, No 1863 24 (**SV**)

VII. Harmonisation of legislation

1. Telecommunications

Greece – Council of State

Interception of electronic communications — Directive 2002/58/EC — Right of access to the administrative file

In this case, a journalist brought an action for annulment against a decision by the President of the Communications Security and Protection Authority (hereinafter 'the ADAE'), rejecting his request to be informed of the grounds for the surveillance to which he had been subjected and to be provided with the relevant file. This appeal was also directed against the decision by the National Intelligence Service refusing to pass on this information to the ADAE.

Having heard the appeal, the Council of State noted that measures to lift the confidentiality of electronic communications, adopted on the basis of national legislation on surveillance, fall within the scope of Directive 2002/58/EC. This directive must be interpreted in the light of the provisions of the Charter of Fundamental Rights of the European Union relating to respect for private life, the protection of personal data and the right to an effective remedy.

The Council of State emphasised that, even where derogations are permitted on grounds of national security, they must comply with the principle of proportionality and be accompanied by effective procedural safeguards, namely, in particular, the obligation to state reasons and the possibility of effective judicial review. In this regard, where a decision to lift the confidentiality of communications is adopted on the basis of a reasoned request from the competent national authorities, it must be ensured that the persons under surveillance have access not only to the decision authorising the measure, but also to the request submitted by the requesting authority.

In this context, the Council of State decided to stay proceedings and ordered that the full file relating to the surveillance measures be forwarded to it.

Symvoulio tis Epikrateias, decision of 18.5.2026, No 709/2026 *(decision available on request)*

2. Public procurement

Portugal – Supreme Administrative Court

Public procurement — European Single Procurement Documents (ESPD) — Use of the capacities of other entities

In this judgment, the Supreme Administrative Court rejected the applicant's argument that, in a public procurement procedure involving pre-qualification, tenderers may remedy procedural irregularities affecting their own tender, but may not rectify those relating to third parties on whose services they rely.

The Supreme Administrative Court referred to the case-law of the Court of Justice in Cases *C-812/24*, *C-469/22* and *C-210/20* and dismissed the appeal brought by the applicant. In the light of these judgments, it considered that the failure to produce the European Single Procurement Documents (ESPDs) for the third-party entities to which the tendering companies had had recourse constituted a formal irregularity that could be rectified. There is no legal basis for distinguishing between procedural irregularities affecting the tenderer's bid and those relating to third parties on whose capabilities the tenderer intends to rely.

Supremo Tribunal Administrativo, judgment of 19.3.2026, No 02084/24.7BEPRT.SA1 (**PT**)

3. Transfer of businesses

Spain – Supreme Court

European banking law — Transfer of administrative liability in cases of money laundering and terrorist financing — Merger by absorption

The Administrative Chamber of the Supreme Court dismissed the appeal in cassation lodged by Banco Santander and upheld the judgment handed down by the Audiencia Nacional (Central Court, Spain) and the penalty imposed on Banco Santander for several serious breaches of the law on the prevention of money laundering and the financing of terrorism, committed by the institution Banco Popular Español, S.A.U. It thus reaffirmed its case-law concerning the transfer of liability for penalties in cases of business succession between legal entities.

In this context, the Supreme Court emphasised that, in accordance with the case-law of the Court of Justice (judgments of 11 December 2007, ETI and Others, *C-280/06*, EU:C:2007:775; of 24 September 2009, Erste Group Bank and Others v. Commission, *C-125/07 P*, *C-133/07 P*, *C-135/07 P* and *C-137/07 P*, EU:C:2009:576; of 5 March 2015, Modelo Continente Hipermercados, *C-343/13*, EU:C:2015:146; of 14 March 2019, Skanska Industrial Solutions and Others, *C-724/17*, EU:C:2019:204; and of 6 October 2021, Sumal, *C-882/19*, EU:C:2021:800), it had already ruled on the transfer of liability for administrative offences in the event of a merger by absorption, and in other cases of succession between legal entities, where the criteria of economic identity, permanence or continuity of economic activity are met. It proceeded on the assumption that financial penalties form part of the liabilities transferred, without this being regarded as contrary to the principle of personal liability, which is based on a concept of culpability that cannot be applied to legal entities. Consequently, in the event of a business succession, the transfer of liability for penalties is not linked to the formal identity of the legal entity, but to the continuity of the economic activity within which the offence was committed. However, any changes to the company's legal form or organisation resulting from the merger by absorption have no effect in this regard. Furthermore, such an interpretation of the transfer of liability is consistent with the logic of the single resolution framework set out in Regulation (EU) No 806/2014, which aims to prevent parties from evading sanctions through legal restructuring.

Tribunal Supremo, judgment of 21.4.2026, No 482/2026 (**ES**)

VIII. Social policy

1. Equal treatment in employment and social security

Italy – Council of State

Honorary magistrates — Primacy of EU law — Equal treatment — Fixed-term employment — Effective redress

In this judgment, the Council of State recognised a former justice of the peace's right to civil service status, as well as to the social security and compensation entitlements that had been denied by the administrative court of first instance.

Firstly, the Council of State concluded that EU law has direct effect, is binding and takes precedence over domestic law where it guarantees essential benefits to fixed-term employees. In particular, it found that the rules applicable to honorary judges, and the interpretation given to them, must be set aside where they fail to comply with EU law and the case-law of the Court of Justice.

The Council of State then pointed out that honorary judges, as fixed-term employees comparable to professional judges, are entitled to equal treatment and therefore cannot be deprived of rights such as paid leave, social security cover or end-of-service allowances without objective justification.

Finally, drawing in particular on the Pelavi case-law (*C-253/24*), the Council of State held that the abuse resulting from the repeated use of fixed-term employment contracts must give rise to effective redress, even where it is no longer possible for the worker to secure permanent employment.

Consiglio di Stato, judgment of 2.4.2026, No 2716 (**IT**)

Denmark – Supreme Court

Equal treatment — Indirect discrimination on grounds of religion — Directive 2000/78/EC — Requirement to shake hands — Proportionality — Compensation

The Supreme Court ruled on whether a requirement imposed on a Muslim trainee teacher to shake hands with all adults, regardless of their gender, was compatible with the law prohibiting discrimination in the labour market. In this case, the trainee, who on religious grounds refused any physical contact with adult men who were not members of her family, had greeted a teacher with an alternative gesture. The school then made it a condition of her continuing the work experience placement that she shake hands with all adults, regardless of gender. When she refused, the placement was terminated.

The Supreme Court held that this requirement constituted a practice that was apparently neutral but likely to place certain people at a particular disadvantage on the grounds of their religion. It noted that the objective pursued, namely equal treatment between women and men, was legitimate and that the requirement might be appropriate. However, the local authority had not demonstrated that it was necessary in order to achieve that objective. In particular, the Supreme Court emphasised that the school had not given sufficient consideration to other forms of greeting that were respectful and applied equally to both sexes. Consequently, it ruled that the termination of the work placement constituted indirect discrimination on the grounds of religion. However, no compensation was awarded in view of the circumstances of the case.

Højesteret, judgment of 13.5.2026, No BS-37715/2025-HJR (**DA**)

2. Protection of fixed-term workers

Spain – Supreme Court

Social policy — ETUC, UNICE and CEEP framework agreement on fixed-term work — Directive 1999/70 — Measures to prevent abuse of successive fixed-term contracts of employment — Rules concerning applicable sanctions

The Supreme Court, hearing an appeal on a point of law, ruled on the case of a public-sector worker who, having passed a competitive examination for a permanent post but not been offered a position, was subsequently employed on a series of fixed-term contracts. The key question was whether, in the light of Clause 5 of Directive 1999/70 and the case-law of the Court of Justice (in particular the judgment of 14 April 2026, Obadal, C-418/24), this commitment had been correctly enforced through the conversion of the contract into a permanent employment relationship or through the payment of compensation subject to a double cap.

In this regard, the Supreme Court noted that it was impossible to grant workers subjected to such abuse the status of 'permanent contract workers' without this constituting a breach of the principles of equality, merit and competence, as enshrined in the Constitution.

In its case-law interpreting Clause 5 of Directive 1999/70, the Court of Justice had pointed out that the Directive requires Member States to set limits on the succession or extension of fixed-term contracts and to provide for effective, dissuasive and proportionate measures in cases of abuse. However, it had not specified what those measures would be; it would be for the national authorities to adopt them, whilst respecting the objective and the practical effect sought by the framework agreement.

In this case, the Supreme Court held that the specific circumstances of the main proceedings – namely, the fact that the worker in question had successfully passed the shortlisting stage of the recruitment process, a criterion recognised as an indicator of a meritorious application – justified the granting of 'permanent worker' status, in accordance with the decision of the court of first instance. The recognition of permanent status is an acceptable solution where a public-sector employee has taken part in a recruitment competition for permanent staff and passed it, but did not secure a post, subsequently signing temporary contracts which constitute an abuse.

It therefore set aside the judgment which had refused to declare the worker's contract to be of indefinite duration and referred the case back to the Labour Inspectorate so that, where appropriate, administrative sanctions could be imposed, emphasising that compensation alone is not always sufficient to satisfy the requirements of Clause 5 of Directive 1999/70.

*Tribunal Supremo, Sala de lo Social, judgment of 11.5.2026, No 475/2026 (**ES**)*

3. Right to strike

Spain – Constitutional Court

Right to strike — Use of technical measures designed to neutralise a strike — Breach

In this judgment, the Constitutional Court addressed the reality of new technologies and the challenge they pose to the effective exercise of the fundamental right to strike, having regard to the case-law of the European Court of Human Rights concerning the right to strike (in particular the judgment of 8 September 2015 in the case of 'Unión Comercial de la Fábrica 4 de noviembre' v. the Republic of Macedonia).

As part of a strike on the Seville metro, there was discussion about a company’s use of double trains during time slots where this measure had not originally been planned, thereby increasing transport capacity and significantly reducing the impact of the strike. The High Court held that this was not merely a matter of organisational discretion, but rather a reactive use of technical means aimed at neutralising the strike and undermining its effectiveness as a means of exerting pressure, thereby qualifying its previous case-law on ‘technological strike-breaking’ and emphasising that the company’s organisational powers cannot be exercised in such a way as to render the fundamental right to strike meaningless.

In this context, the Constitutional Court notes that, within the framework of the current, constantly evolving production model, the increasing functional autonomy of the technical and technological resources integrated into the organisation of the company may lead to a blurring of the boundary between the tasks traditionally carried out by employees and those that previously fell within the remit of the physical means of production. In this context, the company’s ability to adjust the technological, mechanical or automated resources at its disposal and to adapt its usual production and service delivery procedures, in order to maintain the company’s operations for the duration of the strike, has a direct impact on the effective exercise of this fundamental right and has the same effect of mitigating the consequences of the strike as that which previously resulted from the physical replacement of strikers, which formed the basis for the prohibition on external and internal strike-breaking.

Tribunal Constitucional, judgment of 12.3.2026, No 24/2026 (**ES**)

4. Migrant workers

Sweden – Supreme Administrative Court

Social security — Migrant workers — Applicable legislation

The National Social Security Office had rejected an application by a person who had worked in Germany before moving to Sweden to receive parental allowance at a level equivalent to daily sickness benefit, on the grounds that they were subject to German legislation.

Following the administrative court's rejection of their appeal, the person concerned lodged an appeal with the administrative court of appeal. The court ruled, with reference to the national case-law *HFD 2014 ref. 64*, that this person was entitled to a sum corresponding to the difference between the Swedish and German parental allowances.

When the case came before it, the Supreme Administrative Court emphasised that this was a benefit linked to the pursuit of a professional activity. However, as the person concerned was not working in Sweden but retained her job in Germany, she was not subject to Swedish social security legislation and was therefore not entitled to the benefit in question. In this regard, the Supreme Administrative Court relied on the judgment in van den Berg and Giesen (*C-95/18*, paragraphs 66 and 72).

Högsta förvaltningsdomstolen, judgment of 4.5.2026, No 4438-25 (**SV**)

IX. Consumer protection

Netherlands – Court of Appeal for Administrative Disputes in Economic Matters

Consumer protection — Regulation (EC) No 715/2007 — Administrative fine — Ne bis in idem — Identical facts

The Court of Appeal for Administrative Disputes in Economic Matters (hereinafter the 'Court of Appeal') set aside an administrative fine imposed on Volkswagen by the Dutch Authority for Consumers and Markets, on the grounds that the imposition of that fine was contrary to the ne bis in idem principle enshrined in Article 50 of the Charter of Fundamental Rights of the European Union.

Drawing on the case-law of the Court of Justice, in particular the judgment in Volkswagen Group Italia and Volkswagen Aktiengesellschaft (*C-27/22*) and the judgment in Inter consulting (*C-726/21*), the Court of Appeal emphasised that it was necessary to examine whether the facts giving rise to the €450,000 imposed on Volkswagen in the Netherlands were identical to those which had already led to a €1 billion fine being imposed on that company by the German Public Prosecutor's Office.

The Court of Appeal noted that differences in the legal classification of these facts between Member States are irrelevant. In this regard, it held that the facts giving rise to the German fine constituted an indivisible whole which also included the marketing of cars in the Netherlands. The Court of Appeal therefore concluded that the Dutch fine infringed the ne bis in idem principle and must consequently be set aside.

College van Beroep voor het bedrijfsleven, judgment of 2.6.2026, No 24/719 (**NL**)
Press release (**NL**)

X. Common Foreign and Security Policy - Restrictive measures

Austria – Supreme Court

Common Foreign and Security Policy — Restrictive measures — Regulation (EU) No 269/2014 — Concept of 'freezing of funds' — Right to attend and vote at a meeting of holders of share certificates

In this judgment, the Supreme Court clarified the scope of the restrictions affecting the rights of shareholders subject to European Union sanctions under Regulation (EU) No 269/2014.

Drawing on the Court of Justice's judgment in SBK Art Limited (*C-465/24*), the Supreme Court reiterated that shares held by a person subject to sanctions or controlled by a person listed in Annex I to that Regulation constitute 'funds' within the meaning of the Regulation. Consequently, the exercise of the rights attached to them – in particular, attendance at the general meeting and the right to vote – constitutes a use of these funds and falls within the scope of the asset freeze.

Furthermore, the Supreme Court emphasised that this prohibition is absolute in nature and that the freezing of funds therefore results in a categorical exclusion from participation and voting, regardless of the content of the resolutions put before the meeting. Consequently, applying these principles, it ruled that the applicant's exclusion from the general meeting and from voting was lawful, as she is controlled by a person included on the sanctions list.

Oberster Gerichtshof, judgment of 22.4.2026, No 6 Ob 60/26f (**DE**)
Press release (**DE**)

XI. Previous decision - Protection of personal data

United States – Sixth Circuit Court of Appeals

Protection of personal data — International comity — Disclosure of documents — Substantially equivalent alternatives

In this case, Eaton Corporation appealed against the district court's order requiring it to comply with the injunction issued by the US Internal Revenue Service (IRS) demanding the disclosure of employee performance appraisals held by its subsidiary in Ireland.

Like many multinational companies, Eaton Corporation regularly transfers assets across international borders between its subsidiaries.

As part of a tax audit, the IRS had requested that Eaton Corporation provide the performance appraisals of its employees based in Ireland, on the grounds that these might provide insights into the duties actually performed by the Irish staff and, consequently, into the allocation of profits within the group. Under Article 482 of the Internal Revenue Code (the US tax code), the IRS may reallocate income between associated enterprises where necessary to accurately reflect the economic substance of the transactions concerned and ensure that the tax base is correctly determined.

In its reasoning, the appeal court stated that the issue in dispute fell within the scope of international comity, a doctrine which allows a US judge to set aside a European regulation after weighing up the interests at stake. Therefore, assuming that the disclosure of the appraisals in question infringes the General Data Protection Regulation (GDPR), the Court of Appeal applied the comity test based on five factors derived from the judgment in *Société Nationale Industrielle Aérospatiale v. U.S. District Court*, 482 U.S. 522 (1987). It concluded that, on balance, the interests at stake favoured the production of those appraisals. In particular, factors relating to the specific nature of the IRS's request, the lack of suitable alternatives and the balance of national interests favoured such a solution.

In this regard, the Court of Appeal clarified that the interviews and questionnaires proposed by Eaton as alternative measures were not 'substantially equivalent', as they were more costly and less reliable.

Consequently, despite the applicability of the GDPR, Eaton Corporation was compelled to produce the aforementioned performance appraisals of employees at its Irish subsidiary in response to the administrative order issued by the IRS.

*Sixth Circuit Court of Appeals, order of 8.8.2025, 2025 U.S. App. LEXIS 20128; 2025 LX 390056; 2025 WL 2416701 (**EN**)*

The 'Flash News: Decisions of Interest' section presents a selection of judgments handed down by national courts, including supreme courts, in the Member States, as well as, where relevant, in third countries, which are of particular significance in relation to EU law.