

EU & COMPETITION LAW

What did I miss?

EU case law 2025

Keeping track of EU law is like trying to read a book that is being rewritten in real time.

5 MIN READ

EU case law

2025

In 2024, there were 920 new cases, 863 completed cases and 1,206 pending cases before the Court of Justice of the European Union (CJEU) covering both the main court and the General Court.

2025 will prove comparable. So, what *have* been the main CJEU cases so far in 2025?

Topic	Principle	Parties and judgment
Citizenship	There must be no “commercialisation” of a Member State’s citizenship because the granting of a Member State’s citizenship also confers on the new citizen the additional benefit of EU citizenship with all the rights which that entails (e.g. free movement, EU protection and so on).	<u>Commission v Malta</u> (Case C-181/23)
	The CJEU thus decided that the Maltese investor citizenship scheme contravened EU law.	
	This shows how the CJEU is very protective of EU citizenship.	
Competition	Member State laws preventing a group action for collecting damages in cartel or competition cases may infringe EU law.	<u>ASG2</u> (Case C-253/23)
	This complex judgment essentially means that victims of a breach of competition law should be able – in many circumstances – to join together with other plaintiffs in class actions to obtain damages.	
	The implications of this judgment in an Irish context have not yet been fully analysed. It may mean that collective damages actions will have to be permitted in competition cases in Ireland.	
	A refusal by a business (i.e. an “undertaking” in competition law terms) in a dominant position to ensure that its platform is interoperable with an app of another undertaking, which thereby becomes more attractive, can amount to an abuse of dominance in certain circumstances.	<u>Alphabet v AGCM</u> (Case C-233/23)

Topic	Principle	Parties and judgment
Competition	<p>The General Court upheld the European Commission’s decision to examine, at the request of Luxembourg, the acquisition of Boissons Heintz by Brasserie Nationale (Munhowen).</p> <p>Luxembourg had referred the acquisition to the European Commission for review under the EU’s merger control regulation.</p> <p>The European Commission decided to investigate the transaction.</p> <p>The parties challenged the referral to the European Commission on the basis that it was out of time. In particular, they argued that it was made more than 15 working days from the time the concentration was “made known” to the Member State. The parties argued that the Member State had known about the transaction earlier and had sent the request too late.</p> <p>The General Court held that “made known” must consist of an active transmission of relevant and sufficient information to the competent authority which would enable it to decide. The Member State merely having or possessing information of the existence of the transaction is not enough. This is yet another case of ‘words in legislation matter’.</p>	<p><u>Brasserie Nationale and Munhowen v Commission</u> (Case T-289/24)</p>
	<p>A payment card user loses the right to obtain a refund of an unauthorised payment transaction of which he or she has become aware where he or she delayed notifying the transaction to the card provider either intentionally or because of gross negligence.</p>	<p><u>Veracash</u> (Case C-665/23)</p>
Consumers	<p>An outright ban on advertising for pharmacies and pharmaceutical outlets (in force in Poland) is contrary to EU law.</p>	<p><u>Commission v Poland</u> (Case C-200/24)</p>



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Criminal law	The principle of <i>ne bis in idem</i> means that a person may not be prosecuted in one Member State for a criminal act (in this case, terrorism) for which he or she has already been convicted in another Member State - even though the offence has a different classification in each of those Member States.	<u>MSIG</u> (Case C-802/23)
	<p>The principle of <i>lex posterior mitius</i> covers a penalty classified as administrative under Member State law where it is of a criminal nature for the purposes of EU law.</p> <p>This case could be significant in Irish competition law given the introduction of penalties under the Competition (Amendment) Act 2022. It could also be significant in EU environmental law where criminal law and administrative penalties could operate.</p>	<u>BAJI Trans</u> (Case C-544/23)
Customs and excise	Member State legislation under which excise duty is chargeable on the basis of a fictitious supply of excise goods appearing on falsified invoices is not compatible with EU law.	<u>MK v Minister for Finance (Gotek)</u> (Case T-534/24)
Data / GDPR	Rectification of data relating to gender identity cannot be made conditional upon proof of the person having undergone surgery.	<u>Deldits</u> (Case C-247/23)
Employment	<p>The rights of persons with disabilities to protection against indirect discrimination extend to parents of children with disabilities.</p> <p>In this case, a mother wanted a role at work with fixed working hours to care for her son who had extensive and comprehensive needs due to disability.</p> <p>The CJEU held that the prohibition of indirect discrimination on grounds of disability applies to an employee who does not themselves have a disability, but is subjected to such discrimination because of the assistance they provide to their child with a disability, which enables that child to receive the primary care required by virtue of their condition.</p> <p><i>(Continued on next page.)</i></p>	<u>GL v AB SpA (Bervi di)</u> (Case C-38/24)



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Employment	<p><i>(Continued from previous page.)</i></p> <p>The CJEU also held that an employer is required, in order to ensure compliance with the principle of equal treatment of workers and the prohibition of indirect discrimination referred to in article 2(2)(b) of Directive 2000/78, to make reasonable accommodation, within the meaning of article 5 of that directive, in respect of such an employee, provided that the accommodation does not impose an unreasonable burden on the employer.</p>	<p><u>GL v AB SpA (Bervi di)</u> (Case C-38/24)</p>
Employment	<p>Much of the EU directive on adequate minimum wages in the EU was upheld by the CJEU in a case brought by Denmark against the Parliament and Council which had adopted the directive.</p> <p>Denmark believed that the directive had gone too far and had interfered with the rights of Member States in this area.</p> <p>While the CJEU upheld most of the directive, it annulled: (a) the provision listing the criteria that must be considered by Member States with statutory minimum wages when setting and updating those wages; and (b) the rule preventing those wages from being decreased when they are automatically indexed.</p> <p>This was an interesting example of a Member State challenging the Council (of which it forms a part) and the Parliament for adopting legislation which the Member State believes was unlawful.</p>	<p><u>Denmark v Parliament and Council</u> (Case C-19/23)</p>
Free movement of goods	<p>During the Covid-19 pandemic, Hungary introduced a regime obliging exporters of certain construction materials to notify Hungary of the planned export of those materials and to give Hungary a right of pre-emption to purchase the materials.</p> <p>The Commission argued that the Hungarian regime (i) limited free movement of goods between Member States (as a measure having equivalent effect to a quantitative restriction), and (ii) interfered with the EU's trade regime towards third States and the EU's Common Commercial Policy.</p> <p>Hungary claimed that its regime was uncertain and too indirect, but also justified on the grounds of public security.</p>	<p><u>Commission v Hungary</u> (Case C-499/23)</p>



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Public procurement	<p>The CJEU held that article 43(1)(c) of the EU's Concessions Directive (2014/23/EU) must be interpreted as meaning:</p> <p>(i) If the conditions laid down in that provision are satisfied, a concession may be modified without a new award procedure, even where that concession was initially awarded, without a competitive tendering procedure, to an in-house entity and the modification of the subject matter of that concession is carried out on a date on which the concessionaire no longer has the status of an in-house entity.</p> <p>(ii) It does not require the Member States to ensure that national courts review, indirectly and on application, the lawfulness of the initial award of a concession in the context of an action for annulment of a modification of that concession, where that action is brought after the expiry of any time limit laid down by national law (pursuant to article 2f of Council Directive 89/665/EEC) for challenging that initial award by an operator showing an interest in being awarded solely the part of that concession which is the subject of that modification.</p> <p>(iii) The 'need for' modification of a concession has been 'brought about', within the meaning of article 43 of Directive 2014/23 if unforeseeable circumstances make it necessary to adapt the initial concession in order to ensure that the proper performance of the concession may</p>	<p><u>Fastned Deutschland</u> (Case C-452/23)</p>
	<p>A Member State (in this case, Ireland) may not invoke an unforeseeable influx of applicants for international protection to evade its obligation to cover asylum seekers' basic needs.</p>	<p><u>S.A., R.J. v Minister for Children, Equality, Disability, Integration and Youth and Others</u> (Case C-97/24)</p>
Right to asylum	<p>The designation of a third country as a 'safe country of origin' must be amenable to effective judicial review.</p>	<p><u>Alace (LC and CP) v Commissione territoriale</u> (Joined Cases C-758/24 and C-759/24)</p>



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Rule of law	Withdrawing cases from a judge must be based on objective and precise criteria.	<u>DK</u> (Joined Cases C-647/21 and C-648/21)
Sport	Clubs and players may obtain effective judicial review of arbitral awards made by the Court of Arbitration for Sport. So Member State courts and tribunals may conduct in-depth review of awards by sports arbitration to check if they comply with EU law.	<u>Royal Football Club Seraing</u> (Case C-600/23)
	A contractual term obliging a young sportsman to transfer part of his income if he becomes a professional athlete may be unfair under consumer protection law.	<u>Arce</u> (Case C-365/23)
State aid	<p>The CJEU clarified the circumstances in which tax exemptions may be prohibited in EU State aid law.</p> <p>After considering the law on the area, the CJEU stated that article 107(1) TFEU must be interpreted as meaning that a piece of Member State legislation which exempts from property tax certain infrastructure, does not appear to be a measure which confers a selective advantage on the beneficiaries of that exemption. There is no state aid in such circumstances because the infrastructure is made available to all users.</p>	<u>Prezydent Miasta Mielca</u> (Case C-453/23)



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Transport and travel	<p>A customer's gender is not necessary data for the purchase of a transport ticket.</p> <p>The CJEU held that the processing of personal data relating to the titles of the customers of a transport undertaking, the purpose of which is to personalise the commercial communication based on their gender identity, does not appear to be either objectively indispensable or essential to enable the proper performance of a contract and, therefore, cannot be regarded as necessary for the performance of that contract.</p> <p>The implications of this case are not fully clear. For example, a ferry company or airline might still find it useful to have certain personal data in planning for emergencies (e.g. how many children, who require different types of lifejackets, travel on their services?).</p>	<u>Mousse</u> (Case C-394/23)
Transport and Travel	<p>In the case of a packaged travel contract, where a contract has been performed improperly, the passenger or traveller may be entitled to a full refund under the <u>Package Travel Directive</u> even though some services have been provided. This is another pro-consumer/pro-traveller decision by the CJEU.</p>	<u>Tuleka</u> (Case C-469/24)
	<p>Pets can be regarded as “baggage” in some circumstances and should not be automatically excluded.</p>	<u>Iberia Líneas Aéreas de España</u> (Case C-218/24)
	<p>A lightning strike to an aircraft can be an extraordinary circumstance</p>	<u>AirHelp Germany</u> (C-368/24)
	<p>Passengers may be entitled to air passenger compensation when they only have a boarding pass but not a ticket – as may arise where they have booked a package holiday and the tour organiser has booked the airline ticket and the passengers lack the travel contract and merely possess a boarding pass as proof of carriage.</p>	<u>M1.R, M2.R v AAA sp. Z o.o</u> (Case C-20/24 [Cymdek])



FIRST PRELIMINARY RULING BY THE GENERAL COURT

2025 saw the General Court delivering its first preliminary reference ruling. On 9 July 2025, the General Court delivered its ruling in the *Gotek* case mentioned above (concerning customs law).

Until late 2024, only the CJEU could deliver preliminary references – these are answers to novel questions of EU law posed by Member State courts and certain institutions which have cases pending before them.

In October 2024, jurisdiction to deal with preliminary rulings was transferred, in principle, to the General Court in the following areas:

- the common system of value added tax
- excise duties
- the Customs Code
- the tariff classification of goods under the Combined Nomenclature
- compensation and assistance to passengers in the event of denied

boarding or delay or cancellation of transport services

- the scheme for greenhouse gas emission allowance trading

JUDGMENTS IN THE PIPELINE

There are some interesting judgments awaited – where an Advocate General has delivered an opinion, but the CJEU has yet to give its judgment or ruling. These cases turn on issues as diverse as the following:

- *NADA Austria (AR)*: whether publicising on the internet the name of a professional athlete who infringed the anti-doping rules is contrary to EU law
- *Imagens Médicas Integradas*: whether the right to the protection of personal data does not require prior authorisation by a judicial authority in competition investigations/dawn raids
- *Aucrinde (xx v ww)*: whether the EU's Charter of Fundamental Rights prohibits proving paternity through post-mortem genetic sampling
- *Safi (V v Staatssecretaris van Justitie en*

- Veiligheid*): whether being an EU citizen also involves the right *not* to move between Member States
- *Katholische Schwangerschaftsberatung*: whether the dismissal, by a Catholic organisation, of an employee for leaving the Catholic Church may amount to discrimination on grounds of religion

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