



Newsletter

Insurance

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EDITO

This autumn's legal news confirms a strong trend: judges are refining, clarifying and sometimes rethinking the balance between liability and insurance law.

The Court of Cassation, in particular, marked the start of the new term with several landmark decisions that are reshaping the litigation landscape.

In civil liability, the Plenary Assembly has established loss of opportunity as a genuine basis for compensation, giving judges the option of reclassifying claims to prevent victims from being denied redress. This landmark decision reaffirms the protective role of judges without upsetting the balance of the legal process.

In insurance law, case law is just as dynamic: in motor insurance, the invalidity of a policy due to misrepresentation cannot be invoked against the victim, the Court reiterates its requirements regarding the enforceability of the two-year limitation period, and Covid-19 business interruption cover is finally given a clear interpretation based on the concept of "prohibition of access".

All of these decisions underscore the judges' desire to ensure transparency and legal certainty for policyholders.

On the regulatory front, the authorities are also stepping up their vigilance: the ACPR is warning against the abuses of international telemarketing, while the CNIL is once again sanctioning Google for breaches of transparency. On another note, the "Magicobus II" decree refocuses the jurisdiction of the courts on the location of the building concerned, in the interests of bringing justice closer to the ground.

Finally, the firm continues to be energised by new ideas and collective thinking: we are delighted to welcome Juliette Doebeli to the Litigation & Insurance team, and to see Romain Dupeyré and Matthieu Lohr again at several conferences on changes in insurance law.

Happy reading,

Romain Dupeyré

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CIVIL LIABILITY

The Court of Cassation recognises loss of opportunity as grounds for compensation

Cass. AP, 25 June 2025, No. 22-21.146; Cass. AP, 27 June 2025, No. 22-21.812, published in the bulletin.

On 27 June 2025, the Plenary Assembly of the Court of Cassation handed down two major rulings that clarify and strengthen the regime of loss of opportunity in civil liability law, while specifying the role of the judge when faced with a claim for full compensation.

Background

In the first case (No. 22-21.146), a real estate investment company had acquired a property complex, a project compromised by the lack of administrative authorisation, attributed to a breach of the notary's duty to advise. The SCI sought full compensation for its financial and operating losses. The Court of Appeal, while acknowledging the notary's fault, rejected the claim, considering that the loss was merely a loss of opportunity, which had not been invoked by the company.

In the second case (No. 22-21.812), a company accused its solicitor of failing to inform it of the possibility of waiving a non-competition clause in the event of dismissal. Here again, the Court of Appeal recognised the fault but rejected the claim for compensation, considering that the damage was merely a loss of opportunity, which had not been explicitly claimed by the company.

Key points

These judgments establish the possibility for the judge to reclassify, on his own initiative, a claim for full compensation as a claim for compensation for loss of opportunity, even if the injured party has not expressly invoked this basis. This solution aims to prevent a victim from being deprived of any compensation due to an imperfect legal classification of his claim.

However, the Court specifies that the judge must respect the adversarial principle: it is incumbent upon him to invite the parties to submit their observations on the existence of a loss of opportunity, in order to ensure a fair hearing.

This strengthens the role of the judge: they can no longer simply dismiss a claim on the grounds that loss of opportunity was not invoked, once they have established the existence of such damage.

This development is in line with the logic of protecting victims, but raises questions about the scope of the dispositive principle and the parties' control over the proceedings.

The solution

The Plenary Assembly overturned both appeal rulings. It affirmed that recognition of a loss of opportunity allows for compensation for part of the total damage, determined on the basis of the opportunity lost, when that damage is not legally reparable. This damage, although distinct from the total damage, remains dependent on it.

The Court deduces two fundamental principles from this:

- The judge may, without disregarding the subject matter of the dispute, investigate whether there has been a loss of opportunity to avoid the damage, even though compensation for the entire loss was sought. The judge must then invite the parties to submit their observations on this point.
- The judge may not refuse to award compensation for a loss of opportunity to avoid damage, the existence of which he or she has established, on the grounds that only full compensation for that damage was sought.

CAR INSURANCE

Intentional misrepresentation: policy null and void, but not for the victim who took out the policy

Cass. Crim., 23 September 2025, No. 20-86.015, Published in the Bulletin

Following a series of court rulings, the Court of Cassation has ruled that in the event of intentional misrepresentation, the nullity of the car insurance contract is not enforceable against the victim, even if they are both a passenger and the policyholder, unless there is evidence of a genuine abuse of rights.



Background:

On 28 December 2013, a traffic accident occurred: the passenger of a vehicle, who had taken out the car insurance policy himself, was injured while the vehicle was being driven by a third party under the influence of alcohol. The vehicle insurer, intervening in the criminal proceedings, invoked the nullity of the contract on the grounds of intentional misrepresentation by the policyholder regarding the identity of the usual driver.

The Criminal Court declared the objection admissible. The Court of Appeal confirmed the nullity of the contract but declared that this nullity was not enforceable against the passenger, the policyholder and the author of the false declaration.

Following an appeal, on 6 September 2022, the Criminal Chamber of the Court of Cassation sought the opinion of the Second Civil Chamber. Given the issues involved in the application of European Union law, the Second Civil Chamber in turn referred the matter to the CJEU. In a judgment of 19 September 2024, in line with its case law, the CJEU clarified that, except in cases of abuse of rights, the invalidity of the insurance contract cannot be enforced against the passenger who is the victim, even if he or she is the policyholder and the author of the false declaration.

A solution that protects the victim:

In its ruling of 23 September 2025, the Criminal Chamber of the Court of Cassation echoed the words of the CJEU and the Second Civil Chamber: the nullity of the motor insurance contract for intentional misrepresentation regarding the identity of the usual driver must be declared unenforceable against the victim, even when they are both a passenger in the vehicle that caused the accident and the policyholder who made the false declaration, unless the court finds that the victim has committed an abuse of rights.

The Court points out that proof of abuse of rights requires a set of objective circumstances (the objective of EU legislation is not achieved) and a subjective element (the intention to obtain an advantage by artificially creating the necessary conditions). In this case, there was no abuse of rights: the objective of protecting victims is achieved when the passenger seeks compensation as an injured third party.

This judgment is in line with protective European case law and clarifies the scope of the principle of unenforceability, while reiterating the need for rigorous control of abuse of rights.

MARITIME LAW

Articulation in troubled waters of domestic and international provisions on ship seizure

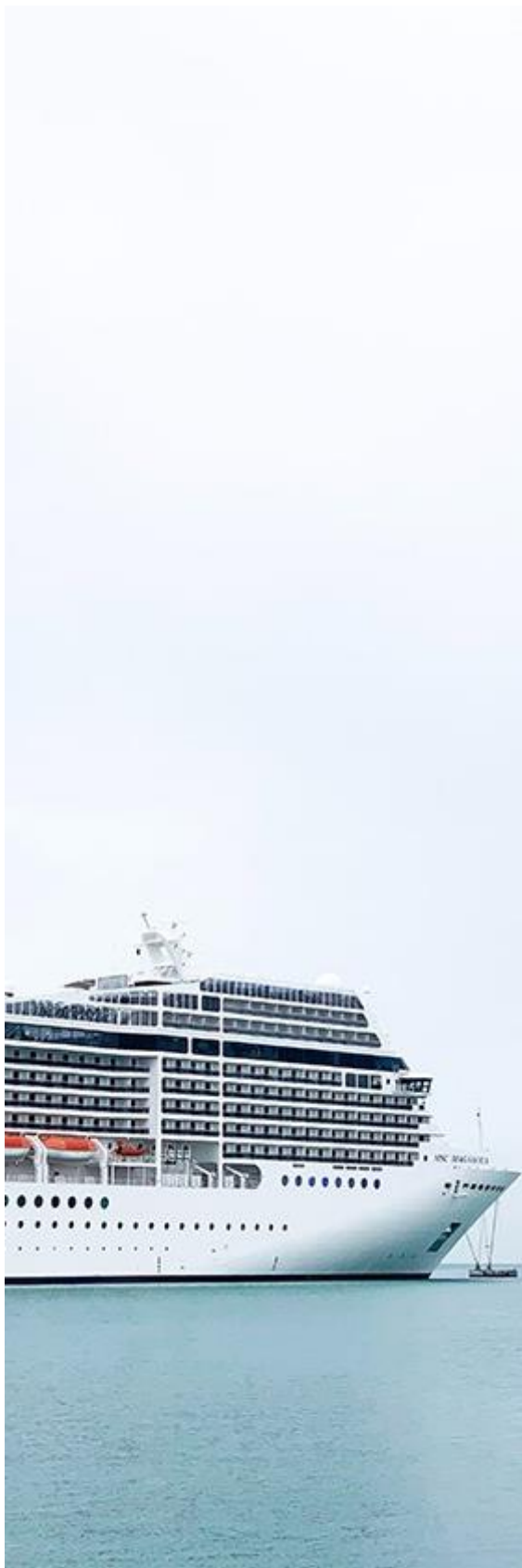
Cass. Com., 10 September 2025, No. 24-12.424, Published in the bulletin

The ruling handed down by the Court of Cassation on 10 September 2025 offers a further illustration of the persistent difficulties encountered by certain courts of first instance in correctly applying the rules relating to the preventive seizure of ships, particularly when it comes to coordinating the provisions of the **Brussels Convention of 10 May 1952** (the "*International Convention for the Unification of Certain Rules Relating to the Arrest of Sea-Going Ships*") and those of the French Transport Code.

The case concerned the preventive seizure of the vessel *Imedghessen*, which took place in March 2021 at the port of Sète, at the request of the charterer. The charterer claimed a debt against the charterer arising from a disputed charter party between the two companies. The Montpellier Court of Appeal, after acknowledging that the alleged claim did indeed fall within the scope of Article 1st of the Convention (which lists maritime claims giving rise to seizure), nevertheless ordered the seizure to be lifted. In support of its decision, it relied on Article L. 5114-22 of the Transport Code, considering that **the claim did not appear to be "sufficiently well founded in principle"**, which did not justify maintaining the protective measure.

The Court of Cassation rejected this reasoning. It pointed out that when the 1952 Convention is applicable, which was the case here since the seizure was carried out in a State party (France) on a ship flying the flag of another State party, it applies exclusively.





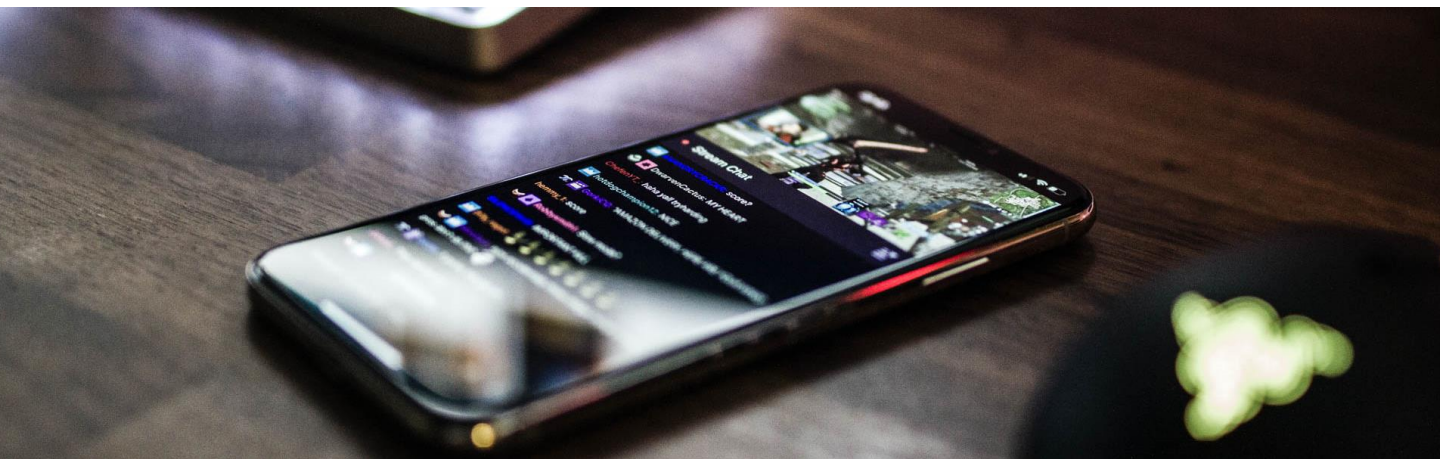
Provided that the alleged claim falls within the scope of Article 1st of the Convention, attachment may be effected on **the basis of the claim alone**, without it being necessary to prove its validity, which is a requirement specific to domestic law. The requirement laid down in Article L. 5114-22 of the Transport Code, according to which the claim must appear to be well founded in principle, is therefore disregarded in this context. By combining the two texts, the Court of Appeal misapplied national law and refused to apply the Convention.

The difficulty here arose from Article 6 of the Convention, which refers to the law of the State in which the arrest was made or requested for the determination of the "*rules of procedure relating to the arrest of a ship*".

In matters of ship arrest, the overlapping of standards is a known source of difficulty. On the one hand, the general provisions of the Code of Civil Enforcement Procedures apply only in the absence of specific provisions in the Transport Code, which are themselves set aside if the Brussels Convention of 10 May 1952 applies. On the other hand, the requirements imposed by these standards may differ: this is the point of interest in the case reported here. The Transport Code requires that the claim appear to be well-founded in principle, whereas the 1952 Convention is satisfied with a simple allegation of a "*maritime claim*" within the meaning of its Article 1st.

The cassation ruling entails the cassation of another part of the judgment. The charterer had been ordered to pay the shipowner compensation (USD 24,900) for the damage caused by the seizure. This part of the judgment, which is necessarily linked to the part concerning the release of the seizure, is also subject to cassation. This compensation, which was based on the unjustified nature of the protective measure, no longer has any basis since the seizure proved to be legally justified.

Arnaud Attias



INSURANCE DISTRIBUTION

New warnings from the ACPR on telephone canvassing



In a press release dated 15 September 2025, the French Prudential Supervision and Resolution Authority (ACPR) warned insurance distributors about their telephone canvassing practices.

Stemming from Law No. 2021-402 of 8 April 2021 and Decree No. 2022-34 of 17 January 2022, now codified in Articles L. 112-2-2 and R. 112-7 of the Insurance Code, the obligations of insurance distributors with regard to telephone canvassing, applicable since 1st April 2022, are strictly regulated. They are based primarily on obtaining and protecting the consent of the prospective customer, who must first give their explicit agreement to continue the telephone conversation.

As the ACPR points out, the distributor must also allow a **minimum period of 24 hours** between the prospective customer receiving the pre-contractual documents and any further telephone contact. Telephone conversations are also recorded – the prospective customer must be informed of this in advance – and must be kept for two years from the date of signing the insurance policy, if a contract is concluded.

However, during inspections carried out since 2023, the regulator found that many distributors were not complying with the applicable regulations in this area, particularly call centres based outside the European Economic Area (EEA).

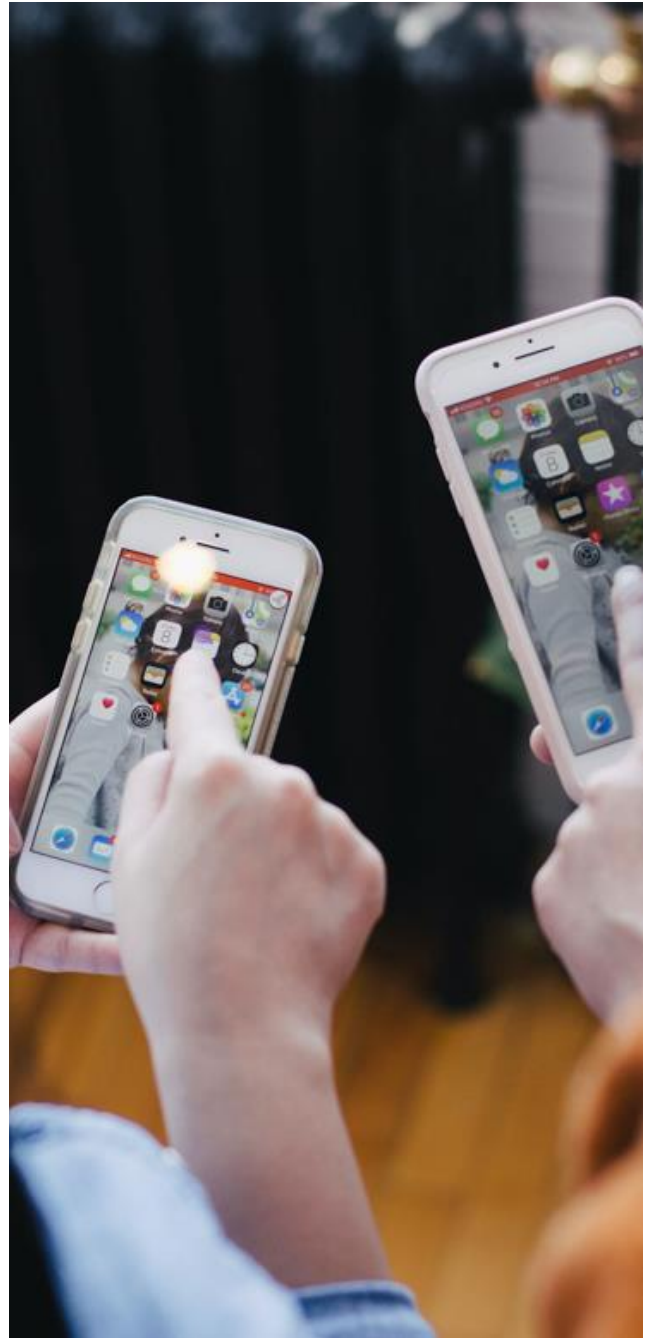
Two scenarios are particularly targeted: on the one hand, intermediaries registered in France with a branch in a non-EEA country that distribute contracts whose risks are located in France; on the other hand, intermediaries located outside the EEA operating non-European call centres that distribute insurance contracts whose risks are located in France.

The ACPR criticises these entities in particular for aggressive commercial practices, failure to obtain consent or obtaining consent under conditions such that it cannot be formally established, and shortcomings in the information provided to customers.

The authority further emphasises that any company established outside the EEA that operates a call centre may not distribute insurance contracts whose risks and commitments are located in France. Similarly, a branch of an intermediary registered in France and located in a third country is not authorised to distribute products whose risks are located in France.

The ACPR therefore emphasises the vital role of wholesale brokers in monitoring the distribution practices of their partners, ensuring that they do not engage in distribution activities from third countries for contracts whose risks are located in France. The role of insurers is also extremely important, as they are required to implement rigorous monitoring of their distribution compliance systems.

Matthieu Lohr



INSURANCE

Informing the insured about the two-year limitation period: all the details!

Cass. Civ. 3e , 11 September 2025, No. 23-16.468

In line with its case law on informing the insured about the two-year limitation period, the Court of Cassation reiterates that the policy must specify the ordinary causes for interruption of the limitation period.

In this case, a real estate investment company had a building complex constructed and took out a construction damage insurance policy with an insurance company. Following a claim made by the building's co-owners' association to the construction damage insurer, the latter refused to provide cover in March 2010.

In December 2010, the judge hearing the summary proceedings appointed a legal expert, whose remit was subsequently extended to other defects in 2014. By summons served in February 2020, the co-owners' association sued the builders, their insurers and the building damage insurer, which opposed the claim on the grounds of the two-year limitation period provided for in Article L. 114-1 of the Insurance Code.

The Court of Appeal of Aix-en-Provence considered that the SCI had signed the special conditions of the policy whereby the insured acknowledged having received a copy of the general conditions, which referred to the two-year limitation period, as well as "*various provisions of the Insurance Code, including Articles L. 114-1 and L. 114-2*".

The Court of Appeal concluded that these references were sufficient to enable the insured party to be aware of the causes of interruption of the two-year limitation period and that the limitation period invoked by the building damage insurer was therefore well founded, given the time that had elapsed between the 2014 order to extend the expert assessment and the 2020 summons to appear on the merits.

This was not the solution adopted by the Court of Cassation, which, pursuant to Article R. 112-1 of the Insurance Code, overturned the appeal ruling on the grounds that "***the contract did not specify the ordinary causes for interruption of the limitation period***".



According to the above-mentioned text, insurance policies must refer to the limitation period for actions arising from the insurance contract. The established case law of the Court of Cassation, reiterated in the judgment in question, penalises any failure to do so by rendering the two-year limitation period unenforceable against the insured party, with the burden of proof of disclosure falling on the insurer (Civ. 2e , 30 June 2011, No. 10-23.223).

While the Court of Cassation accepts that the insured party may, by signing the contract, acknowledge that they have received the general terms and conditions, this is on condition that the latter include a paragraph providing the insured party with precise and comprehensive information on the two-year limitation period and the grounds for its interruption (Civ. 2e , 18 May 2017, No. 16-18.526).

In this case, since the causes for interruption under common law, expressly referred to in Article L. 114-2, were not specified, the Court of Cassation censured the Court of Appeal, which had considered that the information provided was sufficient.

While the decision may seem harsh, it remains a recent and faithful example of the Court of Cassation's case law protecting policyholders with regard to the information that insurers are required to provide concerning the two-year limitation period (see, for example, Civ. 2e , 28 May 2025, No. 23-21.067). Care should therefore be taken not to omit any references to this in policies!



Matthieu Lohr

INSURANCE

Covid-19 and operating losses: the Court of Cassation clarifies the concept of "prohibition of access"

Cass. 2e civ., 18 September 2025, no. 24-16.308; Cass. 2e civ., 18 September 2025, 23-22.957, published in the bulletin

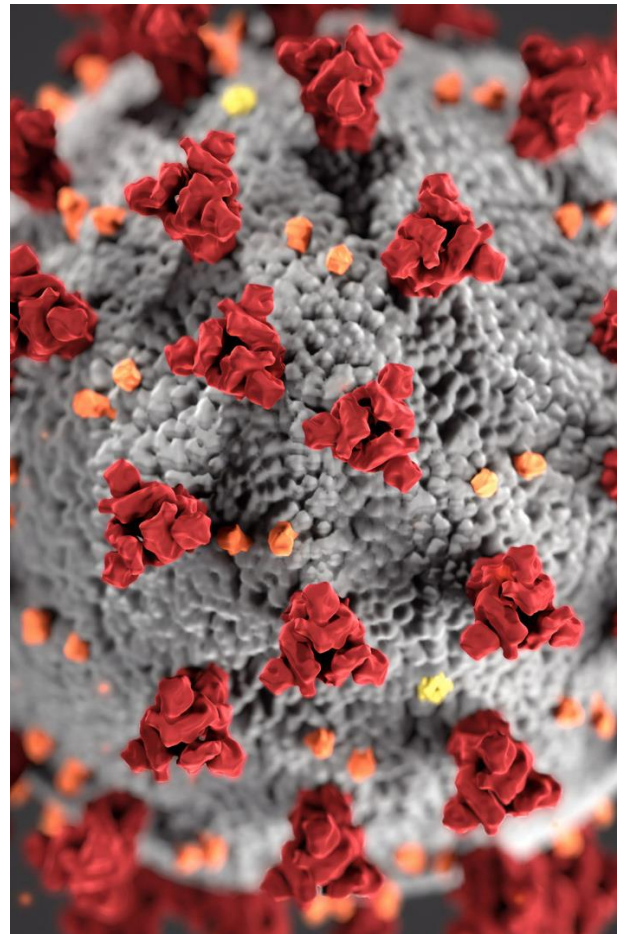
The Covid-19 health crisis has disrupted economic activity, particularly for retailers and restaurateurs, who have been faced with administrative closures and the crucial issue of compensation for operating losses from their insurers. Two rulings by the Court of Cassation on 18 September 2025 provide clarification on the application of "business interruption" cover in the event of "prohibition of access" to premises.

The contexte

In the first case (No. 24-16.308), **companies operating businesses for the purchase, sale and rental of recreational vehicles (motorhomes)** took out a comprehensive professional insurance policy with an insurer. Following the government measures of 15 March 2020 prohibiting the public from entering shops, they filed a claim for compensation for their operating losses. The insurer refused to pay, arguing that the administrative closure did not constitute a **"prohibition of access"** within the meaning of the policy. The courts of first instance dismissed the insured parties' claims, considering that access to the premises remained possible for operators and employees, and that only an "absolute and general defence" of access could characterise the insured event.

In the second case (No. 23-22.957), **a catering company**, insured under a "Flexipro" contract including business interruption cover, was also prohibited from welcoming the public following the government measures of 15 March 2020.

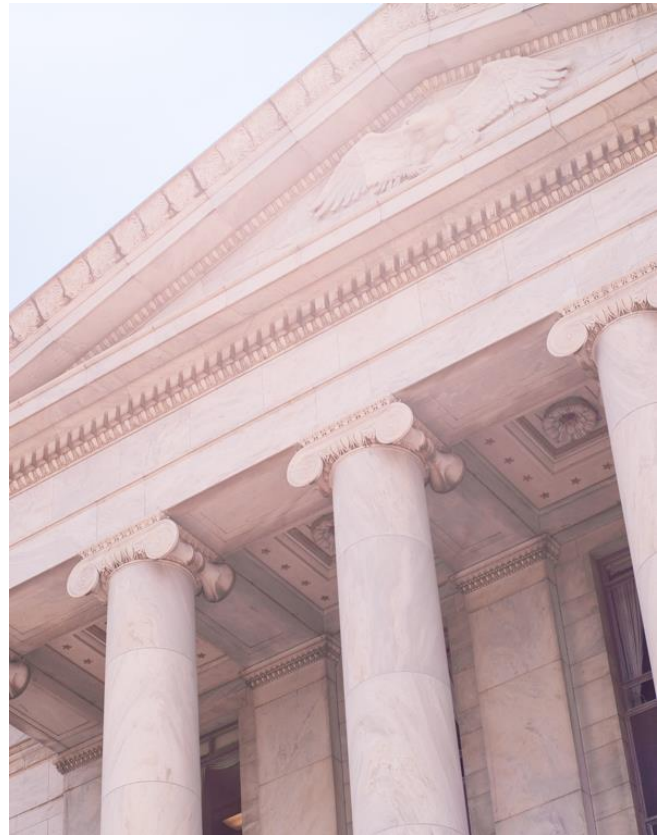
The insurer refused to activate the cover, arguing that physical and legal access to the premises remained possible, particularly for takeaway and delivery services. The Versailles Court of Appeal rejected the claim for compensation, ruling that the health measures did not constitute **total or partial impossibility of access** within the meaning of the policy.



A pragmatic but protective solution

In both rulings, the Court of Cassation overturned the decisions of the lower courts. It first recalled the principle of Article 1103 of the Civil Code: "Legally formed contracts are binding on those who have entered into them." It noted that the insurance contracts provided for coverage of operating losses in the event of a "prohibition of access" or "total or partial impossibility of access" to the premises by the administrative authorities.

The Court noted that the government measures prohibited shops and restaurants from welcoming the public, which, according to the contractual provisions, constituted **a prohibition or impossibility of access to the premises for customers**. It is irrelevant that operators or employees were able to access the premises for operational or maintenance purposes: the insured event relates to public access, the prohibition of which directly caused the operating loss.



Contributions and scope for insurers: towards clarification of cover

The recent rulings provide a welcome clarification of the scope of business interruption cover during a health crisis, particularly with regard to clauses relating to "prohibition of access" or "impossibility of access".

The Court of Cassation specifies that these provisions must be interpreted as referring to an administrative prohibition on admitting the public, and not a physical impossibility of accessing the premises. This interpretation seems to refocus the analysis on the impact on commercial activity, regardless of the physical ability of the operator to visit the premises.

By adopting this position, the High Court has established a more (too?) flexible interpretation of the disputed clauses, which favours the interests of policyholders.

REAL ESTATE

Magicobus II, final ruling on the location of the building

Amendment of Article 145 of the Code of Civil Procedure by Decree No. 2025-619 of 8 July 2025, known as "Magicobus II"

For years, the Paris Judicial Court received a large number of requests for expert opinions on buildings located both throughout France and abroad. This influx was due to flexible civil procedure rules, which allowed lawyers to bring cases before the Paris Judicial Court as soon as one of the parties, often an insurer, was domiciled there. Added to this was the hope of obtaining a hearing date quickly (five weeks in Paris compared to three months in Nanterre) and the recognised technical expertise of magistrates specialising in construction and real estate.

However, this situation posed management difficulties for the Paris Judicial Court, which was regularly seized of cases that had no connection with its territorial jurisdiction. For the President of the Court, Stéphane Noël, the solution lay in a reform that would bring the judge closer to the location of the property, guaranteeing better administration of justice, the presence of the parties at amicable hearings and the mobilisation of local experts.

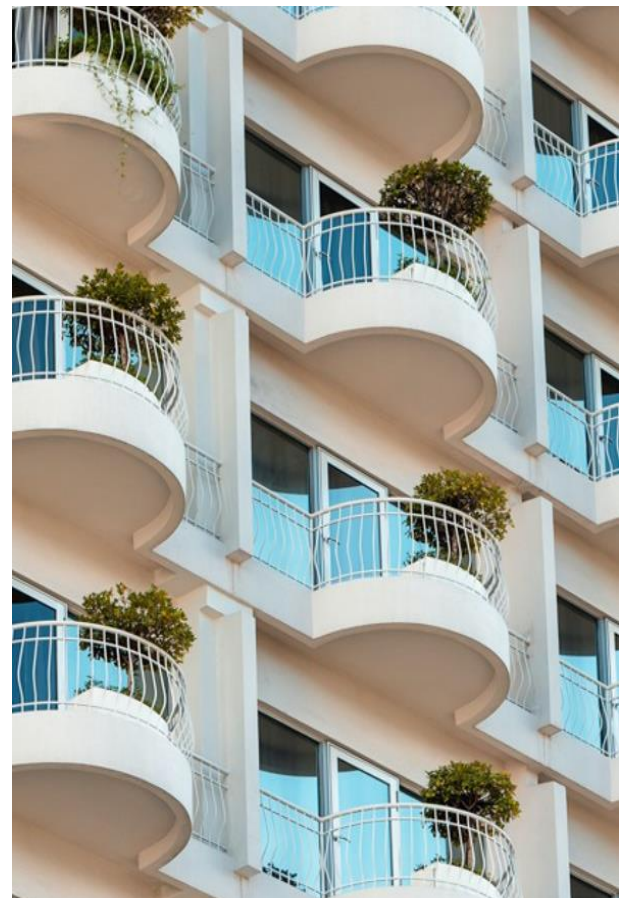
Decree No. 2025-619, known as "**Magicobus II**", published in the Official Journal on 9 July 2025, thus amended Article 145 of the Code of Civil Procedure. The new feature of interest to us here is found in the third paragraph of the article: when the in *futurum* investigative measure **concerns a building, only the court of the place where the property is located now has jurisdiction.**

The "Magicobus II" decree also confirms, in its new second paragraph, the position of the Court of Cassation: the court with territorial jurisdiction to order an in *futurum* investigative measure is the court with territorial jurisdiction to hear the case on its merits or the court with jurisdiction over the area where the measure is to be carried out.

This restriction of jurisdiction in real estate matters was opposed by the Paris Bar Council, which, at its meeting on 1 April 2025, adopted a resolution opposing this measure, which it considered to be unjustified in view of the provisions that already existed and which would be to the detriment of the litigant.

The new rules on territorial jurisdiction for measures in *futurum* shall apply only to proceedings commenced on or after 1 September 2025.

Camille Pesla



DATA PROTECTION

CNIL sanctions Google again

Following a complaint filed by the organisation None Of Your Business (NOYB) in August 2022, on 1st September 2025 the CNIL fined Google €325 million and ordered it to comply within six months, under penalty of a daily fine. This decision penalises a lack of transparency regarding advertising trackers when creating accounts, as well as the insertion of advertisements without obtaining valid consent from users on Gmail.

→On the regulation of cookies:

The CNIL's restricted panel points out that the use of trackers is not illegal if consent is freely given. This assumes that the alternatives offered to the user are balanced and do not encourage them to choose one option over another, for example by making refusal more complex than consent. Consent must also be informed: users must clearly understand the consequences of their choices.

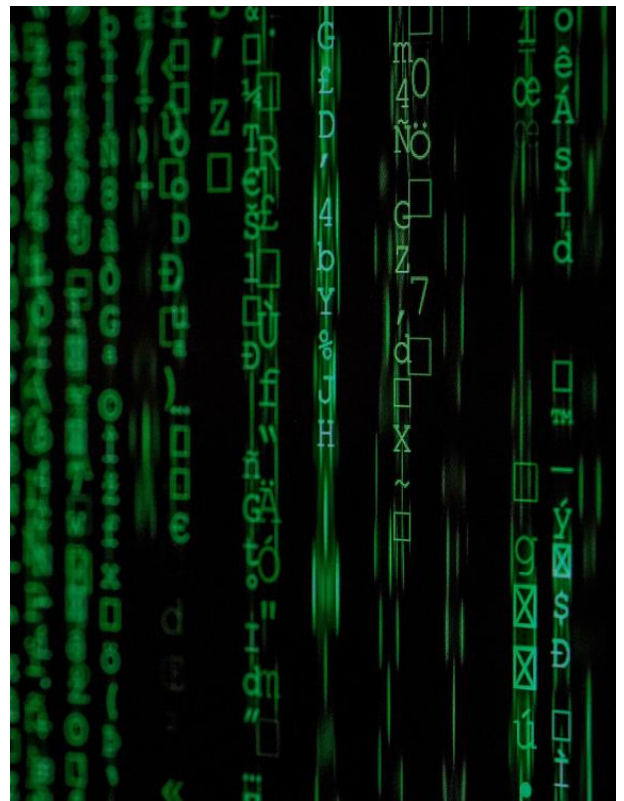
The CNIL notes that prior to October 2023, consent when creating a Google account was not freely given, as refusing personalised advertising trackers was more difficult than accepting them. Even after the addition of a button to refuse trackers, the CNIL considers that consent was still not informed, in particular because no information specified that access to Google group services depended on the placement of these trackers, whether generic or personalised according to the user's choice.

→Advertisements inserted between emails:

The CNIL's checks revealed that Gmail users are offered the option of activating "smart features" to organise their inboxes into three tabs: "Main", "Promotions" and "Social Networks".

The CNIL found that users who chose to activate this setting saw advertising messages in the form of emails inserted between the private emails they received in their inbox, in the "Promotions" and "Social Networks" tabs, without their consent.

The CNIL, relying on a ruling by the Court of Justice of the European Union on 25 November 2021, considered that these messages promoting services or goods, which are not sent by one user to another but are displayed in a space normally reserved for private emails and appear to be genuine emails, constitute direct marketing by email.

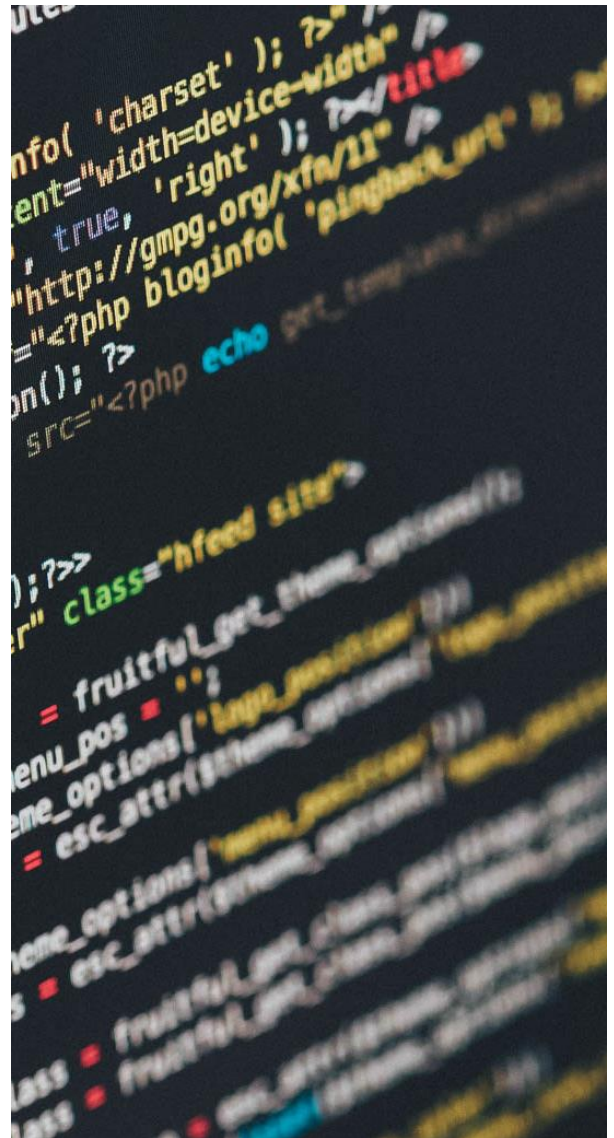


Consequently, it is necessary to obtain the consent of the persons concerned in accordance with Article L. 34-5 of the French Postal and Electronic Communications Code. The CNIL noted that companies made visual changes to advertising messages in April 2023 in order to reduce the risk of confusion with other emails. However, it considered that these changes did not call into question the legal regime applicable to the display of these advertisements, as they still cannot be clearly distinguished from genuine emails.

→**The amount of the fine:**

The CNIL justified the amount of the fine on the basis of several criteria:

- **the very high number of users** affected (in France alone): 74 million accounts affected by the breach on trackers, of which 53 million had seen advertisements displayed illegally in the "Promotions" and "Social Networks" tabs of their Gmail accounts;
- the **central position of the Google group** in the online advertising market and the fact that its Gmail application is the second most widely used email service in the world;
- the fact that **Google has already been penalised** in 2020 and 2021 for tracker breaches.



Arnaud Attias

3 questions for Juliette Doebeli, new associate in the Litigation & Insurance department

Juliette Doebeli joined the firm in July 2025 as a trainee solicitor. She will be strengthening the Litigation & Insurance team led by Romain Dupeyré, the partner in charge of the practice in Paris.

1. What was your career path before joining DWF?

I began my studies at the European Law School at Maastricht University, where I focused on European law and comparative business law. I then continued my education at Paris 1 Panthéon-Sorbonne University, where I obtained a Master's degree in international business law, followed by a Master's degree in English and North American business law. My career path was enriched by experiences at the Court of Justice of the European Union, in companies, and in law firms.

2. What made you want to go into insurance law?

My first experience in a specialised law firm allowed me to discover the richness of insurance law. I was particularly attracted by the diversity of the issues dealt with, which are often complex and cross-disciplinary, with an international dimension that echoes my training. It is a demanding but fascinating subject.

3. What aspect of being a solicitor excites you the most on a daily basis?

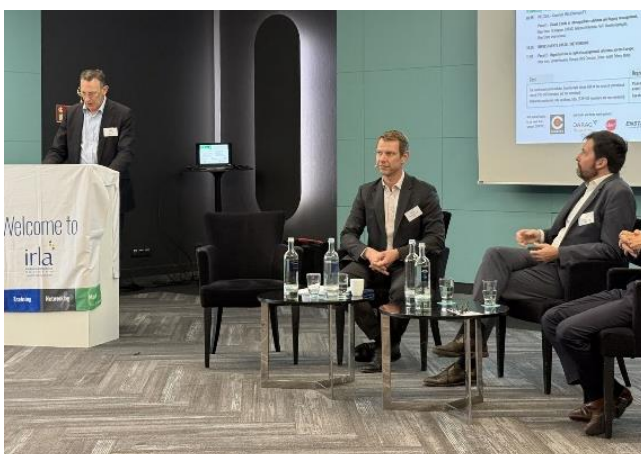
What particularly motivates me is the opportunity to work on a variety of strategic cases while defending the interests of the firm's clients. Joining DWF's Litigation & Insurance department allows me to contribute to proceedings before state and arbitration courts in a stimulating and collaborative environment.

Romain Dupeyré at the IRLA (Insurance and Reinsurance Legacy Association) conference

Romain Dupeyré participated in the IRLA's annual conference in Munich on 14 October.

On this occasion, Romain presented the latest developments in insurance law in France, in particular the mechanisms envisaged to cover the **risk of riots** within the framework of a new dedicated fund.

It was also an opportunity to review the latest developments in local authority insurance, in particular measures to extend the notice periods for terminating these policies.



Matthieu Lohr at the AIDA conference on "Insurance and Violence"

Matthieu attended the symposium organised in Paris on 2 October 2025 by the International Insurance Law Association (AIDA) on the theme of "Insurance and Violence".

The day was organised around four round tables led by key players from the insurance world (brokers, insurers, risk managers), lawyers and academics, in close interaction with the audience:

- The first round table focused on the **definition of acts of violence**. Identifying such acts is not always straightforward, as the legislator does not systematically define acts of violence. This is particularly the case for exclusions relating to foreign war, civil war, riots and popular movements. Contractual freedom therefore plays an even greater role in this context, which can be a source of dispute.
- The second round table focused on the **occurrence of acts of violence**, emphasising the difficulty of identifying the victim and framing the event from a spatial and temporal perspective. Useful ideas were put forward for drafting policies, for example in light of the "radius" clauses frequently found in the English market and the CESAM clauses used in marine insurance.
- **Compensation** was the theme of the third round table, which provided an opportunity to highlight the issue of the distinction between consequential and non-consequential immaterial damage. Compensation was also put into perspective with the clauses on the aggregation of claims and penalty clauses, following on from decisions handed down by the Paris Court of Appeal.
- The day ended with a round table discussion on **how insurers and insured parties perceive acts of violence**. The speakers reviewed the various remedies available to insurers against persons civilly liable for acts of violence and against the State. A presentation of the possibilities offered by market practice regarding coverage for acts of violence (parametric insurance, pools, captives) and the bill adopted on 11 June 2025 by the Senate relating to riots and popular movements brought this rich and informative symposium to a close.



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