



Press and Information

Court of Justice of the European Union
PRESS RELEASE No 15/16
Luxembourg, 23 February 2016

Judgment in Case C-179/14
Commission v Hungary

Certain aspects of the SZÉP leisure-card and Erzsébet meal-voucher schemes, under which employers in Hungary may provide their employees with benefits in kind under favourable tax conditions are incompatible with EU law

The schemes represent an obstacle to the freedom of establishment and the freedom to provide services

Hungarian tax legislation gives employers the option of providing vouchers or cards to their employees under advantageous tax conditions. The employees may use those instruments to obtain from third parties various benefits in kind in the form of certain products and services, without themselves having to make payment to those third parties. However, that legislation also provides that only the SZÉP leisure card (as regards accommodation, leisure and catering services) and the Erzsébet meal voucher (as regards the purchase of ready-to-eat meals) give rise to eligibility for those tax advantages.

The Commission has brought an action against Hungary before the Court of Justice for failure to fulfil obligations. According to the Commission, Hungary has infringed the freedom of establishment and the freedom to provide services (and, in the case of the SZÉP card, the Services Directive¹) because the tax advantages in question are granted only where a SZÉP card or an Erzsébet meal voucher is used and the conditions for issuing those instruments are, in the Commission's view, too restrictive.

By today's judgment, the Court finds that **a number of aspects of the SZÉP leisure-card and Erzsébet meal-voucher schemes are contrary to EU law.**

First, **the fact that Hungarian branches of companies established in other Member States are not able to issue the SZÉP card** infringes the Directive, since providers must not be prevented by the Member States from choosing the form of their establishment.

Second, Hungarian law requires, in certain circumstances, that SZÉP card issuers take the form of a company (public limited company or private limited company) incorporated under Hungarian law. In addition, those issuers must take the form of a subsidiary of a company which is itself formed in accordance with Hungarian law. The Court finds that **the Hungarian legislation is not compatible with the Directive since requirements concerning the legal form of service providers** must not be discriminatory with regard to the location of their registered office. In the present case, **the fact that both the subsidiary and the parent company must be incorporated under Hungarian law means that their registered offices must be located in Hungary, which constitutes discrimination for the purposes of the Directive.**

Third, the Court notes that, in the circumstances of this case, only **financial institutions whose registered offices are in Hungary** are in a position to fulfil the condition that SZÉP card issuers must, in each municipality in Hungary with more than 35 000 inhabitants, have an office open to customers. The Court points out in that regard that, under the Directive, **the provision of services may be reserved to particular providers only** if such a restriction is not discriminatory with

¹ Directive 2006/123/EC of the European Parliament and of the Council of 12 December 2006 on services in the internal market (OJ 2006 L 376, p. 36).

regard to the location of the registered office of the provider. The Court finds that such discrimination is established in the present case.

Fourth, **the Hungarian legislation** also infringes the Directive because, **by requiring issuers to have an establishment in Hungary** given that they must have a presence in every municipality in Hungary with more than 35 000 inhabitants, it deprives service providers established in other Member States of their right to choose to provide cross-border services without becoming established in Hungary. The Court also states in that regard that such an obligation is not proportionate in relation to its underlying objective of consumer and creditor protection, in particular since that objective could be achieved by less restrictive measures.

Fifth, the Court states that the issuing, for consideration, of vouchers intended to allow employers to provide their employees, under favourable tax conditions, with benefits in kind in the form of ready-to-eat meals is **an economic activity within the meaning of the Treaties and that the monopoly** granted to the Magyar Nemzeti Üdülési Alapítvány (Hungarian National Foundation for Recreation, “HNFR”) in respect of that activity **constitutes a restriction of both the freedom of establishment and the freedom to provide services**. The Court considers that the establishment of such a monopoly cannot be justified solely on the ground that the profits arising from the economic activity at issue are, in this case, used by the HNFR for financing social actions or welfare.

NOTE: An action for failure to fulfil obligations directed against a Member State which has failed to comply with its obligations under European Union law may be brought by the Commission or by another Member State. If the Court of Justice finds that there has been a failure to fulfil obligations, the Member State concerned must comply with the Court’s judgment without delay.

Where the Commission considers that the Member State has not complied with the judgment, it may bring a further action seeking financial penalties. However, if measures transposing a directive have not been notified to the Commission, the Court of Justice can, on a proposal from the Commission, impose penalties at the stage of the initial judgment.

Unofficial document for media use, not binding on the Court of Justice.

The [full text](#) of the judgment is published on the CURIA website on the day of delivery.

Press contact: Christopher Fretwell 📞 (+352) 4303 3355