



Press and Information

Court of Justice of the European Union
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Judgment in Case C-171/17
Commission v Hungary

The exclusive operation of a national mobile payment system by an undertaking controlled by the Hungarian State is contrary to EU law

Even if the services provided under that system constitute services of general economic interest, their supply cannot be reserved to a State monopoly

In Hungary, since 1 July 2014, Nemzeti Mobilfizetési Zrt., a Hungarian company wholly owned by the Hungarian State, has operated the national mobile payment system, use of which is mandatory for the mobile payment of public parking charges, tolls for use of the road network, fares on public transport and fees connected with all the other services offered by a State body. The providers of those services are, in principle, bound to ensure customer access to them via the national mobile payment system.

A mobile payment system enables customers to pay for a service using an e-commerce system accessible wirelessly, using telecommunications equipment, digital equipment or other computing equipment.

Being of the opinion that the national mobile payment system adopted by Hungary constitutes an unlawful State monopoly and, accordingly, infringes the provisions of the Services Directive,¹ the Commission has brought an action for failure to fulfil obligations against that Member State.

In that context, Hungary argues, in particular, that even if the services provided under the national mobile payment system at issue fall within the scope of the directive, which it disputes, they constitute a service of general economic interest (SGEI) in respect of which the application of the directive is subject to restrictions.

In today's judgment, the Court finds, first of all, that the directive applies to the national measures by which the State monopoly in question was created. Only SGEIs reserved to public or private entities, or monopolies which existed at the date on which the directive entered into force are excluded from its scope.

Nevertheless, the Court considers that the Commission failed to show that the services governed by the national measures at issue did not constitute SGEIs. In that regard, the Court recalls that the fact that, in the past, those services were provided by private operators does not, in itself, call into question the lawfulness of their classification as SGEIs by Hungary. Consequently, the specific rules for SGEIs laid down in the directive apply to the services in question.

The Court notes, next, that the national mobile payment system at issue constitutes a 'requirement' within the meaning of the directive, since it reserves access to the activity of providing mobile payment services to a State monopoly. Such a 'requirement' must be compatible with the cumulative conditions of non-discrimination, necessity and proportionality set out in the directive. The Court accordingly finds that the national system at issue **does not satisfy the condition of proportionality**. Hungary itself has, in fact, recognised that there were measures less binding and restrictive on the freedom of establishment than the contested measures to attain the objective

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).

pursued by that Member State, namely, in particular, the protection of consumers' interests by an improvement of the functioning of the mobile payment market. In that regard, the Court states that a system of concessions based on a competitive process could, for example, be a less restrictive measure.

In those circumstances, in the light of the failure of Hungary to show that the application of the abovementioned conditions is likely to impede the attainment of the objectives of the contested measures, the Court finds that **those measures are not compatible with the provisions of that directive relating to freedom of establishment.**

Finally, the Court notes that **the contested measures constitute a disproportionate restriction on the freedom to provide services.**

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.

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

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