



Court of Justice of the European Union

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Press and Information

FENS spol. s r.o. v Slovak Republic – Úrad pre reguláciu sieťových odvetví

Judgment in Case C-305/17

## **Member States may not impose a charge on the export of electricity generated in their own territory**

*Such a charge is not justified by the objective of ensuring the security of supply of electricity in the national territory*

With a view to ensuring the reliability and security of the Slovak energy network following the cessation of two units at the Jaslovské Bohunice nuclear power plant, a specific charge was imposed, inter alia during 2008, for the use of this network to export electricity generated in Slovakia, including export to the Member States.

A sum of approximately €6.8m was thus imposed as a charge on Korlea Invest, an electricity supply company established under Slovak law (the legal successor of which is the company FENS, also established in Slovakia). Korlea Invest subsequently contested the legality of that charge, which is no longer applied, before the Slovak courts, claiming that it constituted a charge having equivalent effect to a customs duty, the imposition of which is prohibited by the principle of the free movement of goods.

The Okresný súd Bratislava II (Bratislava II District Court, Slovakia), before which this case is pending, asks the Court of Justice whether the charge in question is contrary to that principle of EU law.

By today's judgment, the Court finds, first of all, that electricity is a product within the meaning of EU law, and that a charge imposed, not on goods as such, but on the use of the network used for their transmission, must be treated as having been imposed on the product itself. Consequently, the disputed charge comes within the scope of the FEU Treaty provisions relating to the free movement of goods.

The Court goes on to find that this charge is levied solely on electricity generated in Slovakia and exported, with the result that it is levied by reason of the fact that the electricity crosses a border. In this respect, the Court refutes the argument of Slovakia that, because there is an identical charge levied on electricity consumed in Slovakia, electricity generated in Slovakia and exported is treated in the same manner as that generated in Slovakia and consumed there. Those two pecuniary charges - one paid by the exporter and the other by the final client - are not levied on electricity at the same marketing stage, as the charge at issue is in fact levied on that product because it crosses a border.

In those circumstances, the Court concludes that **this charge constitutes a charge having equivalent effect to a customs duty, both for electricity exported to another Member State and for electricity exported outside EU territory**. In this regard, with respect to exports to other Member States, the Court states that the principle of the free movement of goods opposes the imposition of such a charge. So far as exports to non-EU countries are concerned, the Court points out that the Member States have undertaken to conduct a common commercial policy, the functioning of which would be compromised if they were authorised unilaterally to impose, on their exports, charges which have an equivalent effect to customs duties.

Finally, the Court notes that the **prohibition of the imposition by Member States of customs duties and charges having equivalent effect constitutes an essential rule of EU law from which there can be no derogation and which cannot be justified under the FEU Treaty**, whether in regard to relations between Member States or in regard to relations between Member States and non-EU countries.

In those circumstances, the Court concludes that **the charge contested in this case is not compatible with the principle of the free movement of goods.**

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**NOTE:** A reference for a preliminary ruling allows the courts and tribunals of the Member States, in disputes which have been brought before them, to refer questions to the Court of Justice about the interpretation of European Union law or the validity of a European Union act. The Court of Justice does not decide the dispute itself. It is for the national court or tribunal to dispose of the case in accordance with the Court's decision, which is similarly binding on other national courts or tribunals before which a similar issue is raised.

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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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