



Press and Information

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Advocate General's Opinion in Case C-78/18
Commission v Hungary

Advocate General Campos Sánchez-Bordona: the restrictions imposed by Hungary on the financing of civil organisations from abroad are not compatible with EU law

Those restrictions infringe the principle of free movement of capital and a number of fundamental rights

In 2017, Hungary adopted a law in order to ensure transparency in civil organisations that receive donations from abroad. Under that law, such organisations must register with the Hungarian authorities as 'organisations in receipt of support from abroad' where the amount of the donations they have received in a given year reaches a certain threshold. When registering, those organisations also have to indicate the name of donors whose support reaches or exceeds 500 000 Hungarian forints (HUF) (approximately € 1 500) and the exact amount of the support. That information is later published on a free, publicly accessible e-platform. In addition, the civil organisations concerned must indicate on their homepages and in their publications that they are an 'organisation in receipt of support from abroad'.

The Commission brought an action for failure to fulfil obligations against Hungary before the Court of Justice. It claims that the law on the transparency of civil organisations financed from abroad infringes both the principle of free movement of capital and a number of rights protected by the Charter of Fundamental Rights of the European Union ('the Charter'): the right to respect for private life, to protection of personal data, and to freedom of association.

In today's Opinion, Advocate General Manuel Campos Sánchez-Bordona takes the view that the transfer of a donation from abroad in favour of a Hungarian civil organisation is a movement of capital. In Hungary, that movement of capital is subject to conditions such as the obligation imposed on certain civil organisations to register as 'organisations in receipt of support from abroad' and the publication of certain data. However, **those conditions** apply solely in the case of donations coming from abroad, as a result of which they are much more likely to affect **nationals of other Member States than Hungarian nationals**.

In those circumstances, the Advocate General is of the opinion that **those conditions amount to a restriction of the principle of free movement of capital**, both with regard to the organisations affected, which may have to cope with financing difficulties and whose exercise of the right to freedom of association may be limited, and their foreign donors, who may be dissuaded from making donations on account of the possible **stigmatising effect** of the publication of the details of those transactions, because they express an ideological affinity that might be compromising in the Hungarian national context.

Concerning, in particular, the *right to freedom of association*, the financial effects of the legislation at issue may affect the viability and the survival of the organisations concerned, undermining the attainment of their social objectives. Furthermore, by making the financial contribution of potential donors more difficult, that legislation directly affects those persons' exercise of the freedom of association.

As regards the *protection of private life and personal data*, the Advocate General states that the mere disclosure of the donor's name is sufficient by itself to identify that donor and to place that

disclosure within the scope of the provisions of EU law on the treatment of personal data.¹ The fact that the donor's name is inextricably linked to a donation for the benefit of a civil organisation constitutes a **link** that by itself reveals an affinity between the donor and that organisation, **which may help to ideologically profile the donor**. The Advocate General adds that the fact that the data published enable such profiling may deter donors or dissuade them from helping to support civil organisations. In that context, the Advocate General considers that the publication in a publicly accessible register of the names of natural persons who make donations from abroad to certain associations established in Hungary and the amounts of such donations is an interference in the private life of those persons as regards the processing of their personal data.

Consequently, the Advocate General takes the view that **the publication of those data is an interference both with the rights relating to the protection of private life and personal data, and with the right to freedom of association, all safeguarded by the Charter**.

In respect of whether there is justification for that interference, the Advocate General admits that some general interest objectives relied on by Hungary — such as the protection of public policy and the fight against money laundering and terrorist financing — may justify, in principle, interference with the rights concerned, but finds that, while **the objective of the protection of public policy** could legitimise measures imposed on civil organisations suspected of breaching public policy, **that obligation does not legitimise general legislation which imposes, ex ante, the obligations at issue on all civil organisations**. Moreover, the Advocate General considers that the EU legislative provisions on the fight against money laundering and against terrorist financing² are sufficient for the purposes of guaranteeing adequate protection.

Lastly, the Advocate General finds that **the measures at issue are disproportionate** because, first, the threshold of 500 000 Hungarian forints (HUF) is excessively low given the gravity of the resulting interference; secondly, donations coming from other Member States are treated in the same way as those coming from outside the EU and, thirdly, failure to comply with the obligations at issue can lead to the winding-up of the infringing organisation.

In those circumstances, the Advocate General proposes that the Court of Justice should declare that **the Hungarian legislation at issue unduly restricts the free movement of capital, in that it includes provisions which amount to unjustified interference with the fundamental rights of respect for private life, protection of personal data and freedom of association protected by the Charter**.

NOTE: The Advocate General's Opinion is not binding on the Court of Justice. It is the role of the Advocates General to propose to the Court, in complete independence, a legal solution to the cases for which they are responsible. The Judges of the Court are now beginning their deliberations in this case. Judgment will be given at a later date.

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 Opinion is published on the CURIA website on the day of delivery.

¹ In particular, Article 8 of the Charter and Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (OJ 2016 L 119, p. 1).

² Specifically, Directive (EU) 2015/849 of the European Parliament and of the Council of 20 May 2015 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing, amending Regulation (EU) No 648/2012 of the European Parliament and of the Council, and repealing Directive 2005/60/EC of the European Parliament and of the Council and Commission Directive 2006/70/EC (OJ 2015 L 141, p. 73).

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