



Press and Information

Court of Justice of the European Union

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Judgment in Case C-482/18

Google Ireland Limited v Nemzeti Adó- és Vámhivatal Kiemelt Adó- és
Vámigazgatósága

The system of penalties relating to the Hungarian tax on advertising is not compatible with EU law

However, EU law does not preclude foreign suppliers of advertising services from being subject to an obligation to submit a tax declaration in relation to that tax

In its judgment of 3 March 2020, **Google Ireland (C-482/18)**, the Grand Chamber of the Court of Justice held that **the principle of the freedom to provide services laid down in Article 56 TFEU does not preclude Hungarian legislation which imposes an obligation to submit a tax declaration on suppliers of advertising services established in another Member State for the purposes of their liability to the Hungarian tax on advertising.** That is the case despite the fact that suppliers of such services established in Hungary are exempt from that obligation on the ground that they are subject to obligations to submit a tax declaration or to register on the basis of liability to all other taxes applicable in Hungary.

However, the Court held that **the principle of the freedom to provide services precludes Hungarian legislation which fines such suppliers of services for non-compliance with the obligation to submit a tax declaration in a series of fines issued within several days capable of amounting to several million euros**, without the competent authority giving those suppliers of services the time necessary to comply with their obligations or the opportunity to submit their observations, or having itself examined the seriousness of the infringement, before adopting its final decision fixing the total amount of those fines. In that regard, the Court notes that the amount of the fine that would be imposed on suppliers of advertising services established in Hungary who fail to comply with a similar obligation to submit a tax declaration or to register contrary to the general provisions of national tax legislation is significantly less and is not increased, in the event of continued failure to comply with such an obligation, in the same proportions, nor necessarily within such a short period of time.

In the present case, Google Ireland, a company incorporated under Irish law which carries on an activity subject to the Hungarian tax on advertising, failed to comply with its obligation to submit a tax declaration in respect of that tax. Pursuant to the system of penalties relating to the tax on advertising, Google Ireland was initially fined HUF 10 000 000 (approximately € 31 000) and then, within a few days, received additional fines, which in total amounted to HUF 1 000 000 000 (approximately € 3 100 000). That sum corresponded to the maximum fine which could be imposed under the applicable Hungarian legislation for irregularities relating to the tax at issue. Google Ireland brought an action before the Fővárosi Közigazgatási és Munkaügyi Bíróság (Budapest Administrative and Labour Court, Hungary), contesting the compatibility with EU law of, first, the obligation for foreign suppliers of advertising services to submit a tax declaration and, second, the system of penalties relating to the tax on advertising. That court refers questions on those matters to the Court of Justice for a preliminary ruling.

The Court pointed out that the principle of freedom to provide services precludes any national rules which may make the provision of services between Member States more difficult than the provision of services purely within a Member State. That principle thus requires the abolition of any restriction on the freedom to provide services imposed on the ground that the person providing a service is established in a Member State other than that in which the service is provided. However, the Court added that measures the only effect of which is to create additional costs in respect of

the service in question and which affect in the same way the provision of services between Member States and such provision within one Member State do not fall within the scope of that prohibition.

The Court found that **the obligation to submit a tax declaration at issue in the present case does not impinge on the exercise of the activity of advertising in Hungary and that that obligation is applicable irrespective of the place of establishment of all suppliers of advertising services. That administrative formality does not per se constitute an obstacle to the freedom to provide services.**

In the present case, it could not be found that there had been any difference in treatment capable of constituting a restriction on the freedom to provide services, since any supplier of advertising services is exempt from the obligation to submit a tax declaration if it has already submitted a tax declaration or registered with the tax authorities for the purposes of some form of direct or indirect tax levied in Hungary. That exemption does not have a deterrent effect, but prevents suppliers already registered from being required to complete a meaningless formality.

As regards penalties in the field of taxation, the Court stated that, although systems of penalties in the field of taxation fall within the competencies of the Member States in the absence of harmonisation at EU level, such systems should not have the effect of jeopardising the freedoms provided for by the FEU Treaty.

In that context, the Court examined whether the penalties connected with failure to submit the tax declaration laid down by the national legislation at issue in the present case infringe the freedom to provide services under Article 56 TFEU. In that regard, the Court notes that, strictly speaking, the system of penalties at issue applies without distinction to all taxpayers who fail to comply with their obligation to submit a tax declaration, irrespective of the Member State in which they are established. However, **only taxpayers not resident in Hungary are, in reality, capable of being fined on that basis.**

Indeed, suppliers of advertising services established in Hungary may be fined for failure to comply with similar obligations to submit a tax declaration and to register required of them under the general provisions of the national tax legislation.

However, **the system of penalties under the Law on the taxation of advertisements enables significantly higher fines to be issued than the system of fines provided for in the event of infringement by a supplier of advertising services established in Hungary of its obligation to register.** Furthermore, neither the amount of the fines imposed under that system, nor the deadlines within which to pay those fines, are as stringent as those applied under the system of penalties laid down by the Law on the taxation of advertisements.

The Court concludes that **that difference in treatment, which it considers disproportionate and therefore unjustified, constitutes a restriction on the freedom to provide services prohibited under Article 56 TFEU.**

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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