



Press and Information

Court of Justice of the European Union

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Advocate General's Opinion in Case C-66/18
Commission v Hungary

In the opinion of Advocate General Kokott, Hungary must treat foreign and national higher education institutions equally

The requirements introduced in Hungary in 2017 of an international treaty with the State of origin and of genuine teaching activity in that State are not compatible with EU law and WTO law

In 2017 the Hungarian Law on Higher Education was amended, so that higher education institutions from States outside the EEA could continue their activities in Hungary only if an international treaty existed between Hungary and their State of origin. In addition, *all* foreign higher education institutions who wanted to offer higher education in Hungary were required also to offer such education in their State of origin.

The **Central European University (CEU)**, founded under the law of New York State (United States) by the Hungarian-born US businessman George Soros, was the only foreign higher education institution then active in Hungary which did not meet the new requirements. It therefore ceased to operate in Hungary and in November 2019 opened a new campus in Vienna (Austria).

In 2018 the Commission brought an action against Hungary for failure to fulfil its obligations because of the abovementioned amendments to the Law on Higher Education. In her Opinion delivered today, Advocate General Juliane Kokott proposes to the Court of Justice that this action should be upheld.

The Advocate General expresses the view that the requirement of an international treaty with the State of origin is incompatible with the **national treatment rule** (the rule that foreign and domestic service providers must be treated equally) **under the General Agreement on Trade in Services (GATS)**. That agreement was concluded within the framework of the World Trade Organisation (WTO) and approved by the EU and therefore is part of EU law. Although the **Court of Justice** normally does not enforce **WTO law**, the Court does have jurisdiction to give rulings within the European Union on actions in which the Commission claims that a Member State has failed to comply with WTO law. Through such actions the EU manifests its determination to act in a way that is compatible with international law. This corresponds to the comprehensive competence of the Union in the area of trade policy, on the basis of which the EU is responsible externally for all GATS obligations and undertakes negotiations within the framework of the WTO.

Within the framework of the GATS, Hungary has, in relation to measures such as those at issue in this case, made a full commitment to treat equally foreign and national service providers. Hungary has made no use of the possibility of giving notice of qualifications to national treatment in the case of higher education services. Consequently, the new requirement cannot be justified.

While an international treaty, whereby the government of the State of Origin of a higher education institution basically supports the latter's activity in Hungary, could demonstrate its reliability and thereby could contribute to preventing fraudulent practices, the requirement in this specific form appears to be a means of arbitrary discrimination against higher education institutions established in third States. Whether and when such a treaty exists is entirely controlled by Hungary. This requirement amounts ultimately to an **authorisation requirement**. Within the framework of the GATS, however, Hungary claimed no right to impose such a requirement.

In addition, the requirement of an international treaty with the State of origin is contrary to the Charter of Fundamental Rights of the European Union. That requirement constitutes a disproportionate restriction on the **freedom to found and to operate educational establishments** and on **academic freedom**. The Fundamental Rights of the European Union are binding on Hungary in the area of higher education, where, as here, international law obligations of the Union are to be put into effect. Responsibility for the commitments originally entered into by Hungary within the framework of the GATS has been assumed by the European Union.

Further, the requirement of genuine teaching activity in the State of Origin, which applies to all foreign higher education institutions, including those of other EU Member States and of EEA States, in the opinion of Advocate General Kokott is an infringement, because of the fact that it is discriminatory and disproportionate, of **freedom of establishment, the Services Directive,¹ the Charter of Fundamental Rights** (the freedom to found and to operate educational establishments and academic freedom) and the national treatment rule of the **GATS**. Freedom of establishment includes, in particular, the right of an economic operator to pursue his activity exclusively in another Member State.

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.

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.

Press contact: Jacques René Zammit ☎ (+352) 4303 3355

Pictures of the delivery of the Opinion are available from "[Europe by Satellite](#)" ☎ (+32) 2 2964106

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).