



Press and Information

Court of Justice of the European Union

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Judgment in Case C-78/18  
Commission v Hungary

## **The restrictions imposed by Hungary on the financing of civil organisations by persons established outside that Member State do not comply with EU law**

In the judgment in *Commission v Hungary (Transparency of associations)* (C-78/18), delivered on 18 June 2020, the Grand Chamber of the Court of Justice **upheld the action for failure to fulfil obligations brought by the European Commission against that Member State**. The Court held that, **by imposing obligations of registration, declaration and publication on certain categories of civil society organisations directly or indirectly receiving support from abroad exceeding a certain threshold and providing for the possibility of applying penalties to organisations that do not comply with those obligations, Hungary had introduced discriminatory and unjustified restrictions with regard to both the organisations at issue and the persons granting them such support**. Those restrictions run contrary to the obligations on Member States in respect of the free movement of capital laid down in Article 63 TFEU and to Articles 7, 8 and 12 of the Charter of Fundamental Rights of the European Union ('the Charter'), on the right to respect for private and family life, the right to the protection of personal data and the right to freedom of association.

In 2017, Hungary adopted a law which was presented as seeking to ensure the transparency of civil organisations receiving donations from abroad ('the Transparency Law').<sup>1</sup> Under that law, those organisations have to register with the Hungarian courts as an 'organisation in receipt of support from abroad' where the amount of the donations sent to them from other Member States or from third countries over the course of a year exceeds a set threshold. When registering, they must also indicate, inter alia, the name of the donors whose support reached or exceeded the sum of HUF 500 000 (approximately €1,400) and the exact amount of the support. That information is then published on a freely accessible public electronic platform. Furthermore, the civil organisations concerned must state, on their homepage and in all their publications, that they are an 'organisation in receipt of support from abroad'.

The Commission brought an action for failure to fulfil obligations before the Court of Justice against Hungary, submitting that that Law infringed both the FEU Treaty and the Charter.

Before examining the substance of the action, the Court, ruling on the plea of inadmissibility raised by Hungary, pointed out that the fact that the Commission makes the pre-litigation procedure subject to short time-limits is not in itself capable of leading to the inadmissibility of the subsequent action for failure to fulfil obligations. Such a finding of inadmissibility is only to be made where the Commission's conduct made it more difficult for the Member State concerned to refute that institution's complaints and thus infringed the rights of the defence, which was not proven here.

As regards substance, the Court held, as a preliminary point, that Hungary was not justified in alleging that the Commission did not produce evidence of the Transparency Law's effects in practice on the free movement guaranteed under Article 63 TFEU. The existence of a failure to fulfil obligations may be proved, where it has its origin in the adoption of a legislative or regulatory

<sup>1</sup> A külföldről támogatott szervezetek átláthatóságáról szóló 2017. évi LXXVI. törvény (Law No. LXXVI of 2017 on the Transparency of Organisations which receive Support from Abroad)

measure whose existence and application are not contested, by means of a legal analysis of the provisions of that measure.

Going on to examine the merits of the Commission's complaints, the Court held, in the first place, that **the transactions covered by the Transparency Law fell within the scope of the concept of 'movements of capital'** in Article 63(1) TFEU and that **the law in question constitutes a restrictive measure of a discriminatory nature**. It establishes a difference in treatment between domestic and cross-border movements of capital which does not correspond to any objective difference in the situations at issue and which is apt to deter natural or legal persons established in other Member States or third countries from providing financial support to the organisations concerned. In particular, the Transparency Law applies, exclusively and in a targeted manner, to associations and foundations receiving financial support sent from other Member States or third countries, which it singles out by requiring them to declare themselves, to register and systematically to present themselves to the public under the designation 'organisations in receipt of support from abroad', subject to penalties which may extend to their dissolution. In addition, **the measures which it lays down are such as to create a climate of distrust with regard to those associations and foundations**. The public disclosure of information in relation to persons established in other Member States or in third countries which provide financial support to those associations and foundations is also such as to deter them from providing such support. Consequently, **the obligations of registration, declaration and publication and the penalties provided for under the Transparency Law, viewed together, constitute a restriction on the free movement of capital, prohibited under Article 63 TFEU**.

As regards the possible justification of that restriction, the Court points out that the objective consisting in increasing transparency in respect of the financing of associations may be considered to be an overriding reason in the public interest. Some civil society organisations may, having regard to the aims which they pursue and the means at their disposal, have a significant influence on public life and public debate, warranting their financing being subject to measures intended to ensure its transparency, especially where such financing originates from third countries. However, in the present case, **Hungary has not demonstrated why the objective on which it relies, of increasing transparency in respect of the financing of associations, warrants the measures specifically implemented by the Transparency Law**. In particular, **those measures apply indiscriminately with regard to any financial support exceeding a certain threshold and to all the organisations falling within the scope of that law, instead of targeting those which are genuinely likely to have a significant influence on public life and public debate**.

As to the grounds of public policy or public security mentioned in Article 65(1)(b) TFEU, the Court notes that such grounds may be relied upon in a given field in so far as the EU legislature has not completely harmonised the measures which seek to ensure their protection, and that they cover, in particular, the fight against money-laundering, against the financing of terrorism and against organised crime. However, those grounds may not be relied upon unless there is a genuine, present and sufficiently serious threat to a fundamental interest of society. In the present case, Hungary has not submitted any argument such as to establish specifically that there is such a threat. Rather, the Transparency Law is founded on a presumption made on principle and indiscriminately that any financial support of civil organisations that is sent from abroad is intrinsically suspect.

The Court concluded that **the restrictions stemming from the Transparency Law were not justified and therefore that Hungary had failed to fulfil its obligations under Article 63 TFEU**.

In the second place, the Court examined whether the provisions of the Transparency Law complied with Articles 7, 8 and 12 of the Charter, with which a national measure must comply where the Member State which is the author of that measure intends to justify the restriction it contains by an overriding reason in the public interest or by a reason mentioned in the FEU Treaty.

Concerning, first of all, **the right to freedom of association**, enshrined in Article 12(1) of the Charter, the Court points out that it constitutes one of the essential bases of a democratic and

pluralist society, inasmuch as it allows citizens to act collectively in fields of mutual interest and in doing so to contribute to the proper functioning of public life. In the present case, the Court found that **the measures provided for by the Transparency Law limited that right**, inasmuch as they rendered significantly more difficult, in several respects, the action and the operation of the associations falling within the scope of that law.

As regards, next, **the right to respect for private and family life**, enshrined in Article 7 of the Charter, the Court recalled that it compelled public authorities to refrain from any unjustified interference in the life of persons. It observed that in the present case **the obligations of declaration and of publication laid down by the Transparency Law limited that right**. So far as concerns **the right to the protection of personal data** laid down in Article 8(1) of the Charter, which is to some extent linked to the right for respect to private and family life, the Court noted that it precluded information in relation to identified or identifiable natural persons from being disseminated to third parties, whether that be public authorities or the general public, unless that dissemination takes place in the context of fair processing meeting the requirements laid down in Article 8(2) of the Charter. Apart from in that situation, such dissemination, which constitutes the processing of personal data, must therefore be regarded as limiting the right to the protection of personal data guaranteed in Article 8(1) of the Charter. In the present instance, the Transparency Law provides for the disclosure of personal data and **Hungary has not submitted that such disclosure was part of processing meeting the abovementioned requirements**.

Addressing, lastly, the issue of the possible justification of the limitations to fundamental rights, the Court observed that, as was apparent from the analysis already carried out in the light of the FEU Treaty, **the provisions of the Transparency Law could not be justified by any of the objectives of general interest which Hungary relied upon**.

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**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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