



PRESS RELEASE No 47/24

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Judgment of the Court in Case C-516/22 | Commission v United Kingdom (Judgment of the Supreme Court)

The United Kingdom has infringed EU law as a result of a judgment of its Supreme Court

Infringement proceedings against the United Kingdom for possible breaches of EU law committed before the end of the transition period (31 December 2020) are possible in the four years following that date

On 19 February 2020, that is before the end of the transition period, the Supreme Court of the United Kingdom delivered the *Micula v Romania* judgment¹ authorising the enforcement of an arbitral award made in International Centre for Settlement of Investment Disputes (ICSID) Case *Ioan Micula, Viorel Micula and Others v. Romania*². By that arbitral award, Romania was ordered to pay Swedish investors compensation of approximately €178 million on account of the early repeal of a regional investment aid scheme. The judgment of the Supreme Court of the United Kingdom was delivered despite the fact that the Commission, which considered that compensation to be State aid incompatible with EU law, had prohibited Romania from paying it. Moreover, a dispute concerning that Commission decision was pending before the Court of Justice³.

In the light of the aforementioned judgment, the Commission brought before the Court of Justice, in July 2022, an action against the United Kingdom for failure to fulfil obligations. Since the United Kingdom declined to submit observations in the proceedings, the Court gives judgment by default.

By today's judgment, the Court of Justice declares that **the United Kingdom has failed to fulfil its obligations under EU law as a result of the judgment of its Supreme Court.**

The Court of Justice recalls that, in accordance with the Withdrawal Agreement (Brexit), it has jurisdiction over such actions during the four years after the end of the transition period (which extended from 1 February to 31 December 2020) where the action seeks a declaration that the United Kingdom has failed to fulfil an obligation under EU law before the end of that transition period. It recalls that the Member States' obligation to comply with EU law is binding on all their authorities, including, for matters within their jurisdiction, the courts.

According to the Court of Justice, **the Supreme Court of the United Kingdom erred in concluding that EU law** (in particular the State aid provisions) was not applicable to the United Kingdom's obligation, under the ICSID Convention, to enforce the arbitral award on the ground that that convention was concluded by the United Kingdom with third countries prior to its accession to the European Union⁴, so that EU law **did not preclude enforcement of that arbitral award**. Indeed, **that court ought to have examined beforehand in detail whether such an obligation**, despite relating to an award finding that one Member State (Romania) has infringed a bilateral investment treaty concluded with another Member State (Sweden), **also entails rights which third countries might rely on as against those States.**

It cannot be accepted that a national court or tribunal, still less so a court or tribunal against whose decisions there is no judicial remedy under national law, may adopt an erroneous interpretation of EU law, the object and effect of

which is deliberately to exclude the application of EU law in its entirety. Such an interpretation has the effect of setting aside the principle of the primacy of EU law. **The Supreme Court of the United Kingdom** therefore **seriously compromised the EU legal order**.

Furthermore, the Court finds that there has been a **breach of the obligation of sincere cooperation**. Where a national court is seised of a case that is already the subject matter of a Commission investigation or proceedings before the Courts of the European Union, that national court must stay the case before it, unless there is scarcely any risk of conflict between its future judgment and the future act of the Commission or the future judgment of the Courts of the European Union. However, by the judgment at issue, the Supreme Court of the United Kingdom ruled on the interpretation of EU law and the application of that law to the implementation of the arbitral award, even though the matter relating to that interpretation had been decided in a Commission decision and was awaiting adjudication before the Courts of the European Union.

Furthermore, **it was for the Supreme Court of the United Kingdom**, as a national court or tribunal against whose decisions there is no judicial remedy under national law, **to make a reference to the Court of Justice** concerning the interpretation of the applicable EU law, in order to avert the risk of an incorrect interpretation of EU law which it did in fact reach in the judgment at issue.

Lastly, the Court finds a **breach of the prohibition on implementing State aid until the Commission has taken a final decision on that measure**, in that the judgment at issue ordered Romania to pay the compensation to investors even though the Commission's decision was the subject of proceedings before the Court.

NOTE: An action for failure to fulfil obligations directed against a Member State which has failed to comply with its obligations under EU 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 and, as the case may be, an abstract](#) of the judgment is published on the CURIA website on the day of delivery.

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¹ Judgment of 19 February 2020 of the United Kingdom Supreme Court, *Micula and Others v Romania*, [\[2020\] UKSC 5](#).

² Arbitral award of the International Centre for Settlement of Investment Disputes [ICSID No ARB/05/20](#).

³ See Press Release [No 15/22](#) on the judgment of the Court of Justice in *Commission v European Food and Others*, [C-638/19 P](#). The Court of Justice referred the cases concerned back to the General Court, where they are still pending.

⁴ Pursuant to the first paragraph of Article 351 TFEU, as interpreted by the Court of Justice, for a rule of EU law to be deprived of effect as a result of an international agreement, two conditions must be fulfilled: the agreement must have been concluded before the entry into force of the EU Treaties in the Member State concerned and the third country or countries concerned must derive from it rights which it or they can require that Member State to respect. That provision cannot be relied on by the Member States where, in the particular case under consideration, the rights of third countries are not involved.