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Judgment of the Court in Case C-499/23 | Commission v Hungary (Construction materials for critical infrastructure)

Free Movement of Goods: the procedure established by Hungary for exports of raw materials and construction materials is contrary to EU law

In the context of the Covid-19 pandemic and the world-wide scarcity of raw materials, Hungary adopted a procedure laying down an obligation to notify exports of construction materials and the possibility for the Hungarian State to exercise a right of pre-emption and purchase in respect of those materials.

The European Commission brought infringement proceedings against Hungary before the Court of Justice submitting in particular that the procedure at issue constitutes a measure having equivalent effect to a quantitative restriction which is not justified and therefore infringes the principle of free movement of goods. Since the restrictions extend to exports to third countries, the Commission submits that Hungary has also infringed the exclusive competence of the European Union in the field of the common commercial policy.

Hungary considers however that the procedure at issue does not constitute a measure having equivalent effect to a quantitative restriction, since its effects are too uncertain and too indirect. In any event, it is justified on grounds of public security, its main objective being to protect critical infrastructure by ensuring the security of their supply of construction materials.

The Court upholds the Commission's action in its entirety and declares that Hungary has failed to fulfil its obligations.

It finds that the measures at issue establish an additional administrative burden, provide for a fine in the event of failure to comply with the notification obligation, result in the extension of delivery times and, if the right of pre-emption and purchase reserved to the Hungarian State is exercised, definitively prevent the export transaction. Accordingly, **those measures have the explicit object of restricting exports of construction materials and, as such, constitute measures having equivalent effect to quantitative restrictions, prohibited, in principle, by the principle of the free movement of goods.**

The Court dismisses the arguments relied on by Hungary to justify the restrictions at issue, on the ground that that Member State **did not succeed in establishing that the scarcity** of the raw materials and construction materials concerned **constituted a genuine and sufficiently serious threat affecting a fundamental interest of society.**

For the same reason, Hungary's reliance on public security to justify the restrictions relating to exports to third countries was also not well founded. Accordingly, by adopting those measures, it had also **infringed the exclusive competence of the European Union in the field of the common commercial policy.**

Finally, the Court declares that, by adopting the measures before the expiry of the standstill period of three months and in the absence of the notification to the Commission of the changed draft law, Hungary had not complied with the information procedure provided for in the field of technical regulations.

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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Images of the delivery of the judgment are available on '[Europe by Satellite](#)' ☎ (+32) 2 2964106.

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