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Judgment of the Court in Case C-144/24 | Commission v Hungary (Additional mining fee)

Freedom of establishment: the additional mining fee introduced by Hungary infringes EU law

Since 2021, a Hungarian decree has established a reference price for five construction materials, namely graded sand, graded gravel, graded sandy gravel, natural sandy gravel and cement. In addition, that decree requires undertakings selling those materials above the reference price to pay an additional mining fee. Initially limited to the duration of the COVID-19 pandemic, that decree has been extended on several occasions on account of the war in Ukraine. Furthermore, another decree introduces a minimum extraction requirement for mining operators engaged in the extraction of raw materials and basic construction materials. An operator which fails to comply with that obligation risks losing its mining permit. Lastly, the Mining Law authorises the president of the Mining Supervisory Authority to adopt, under certain conditions, measures similar to those provided for in those two decrees.

Taking the view that all of those measures have the effect of restricting freedom of establishment, the European Commission brought proceedings before the Court of Justice. According to the Commission, in particular, as the reference prices are lower than the market prices, the profits of those liable for the additional mining fee are considerably restricted, to the point of forcing them to operate at a loss. It further argues that, given that that fee mainly affects undertakings held by companies established in other Member States, the national legislation at issue constitutes indirect discrimination.

Hungary claims that those measures do not constitute a restriction on freedom of establishment. It contends, in particular, that the additional mining fee is a tax based on a neutral tax criterion, namely turnover. Moreover, the fact that the undertakings liable for the additional mining fee are mainly held by companies established in other Member States results from the specific structure of the Hungarian market, in which the most powerful undertakings in the sector are foreign undertakings.

In its judgment, the Court partially upholds the Commission's action and finds that the obligation to pay the additional mining fee constitutes a restriction on freedom of establishment.

It finds, in particular, first, that **that fee necessarily renders it less attractive, or even impossible, to exercise freedom of establishment**, given that it may prevent the undertakings which are liable for it from obtaining a return on the investments made. Second, **that fee**, which provides for a criterion of differentiation that is apparently objective, but which applies mainly and systematically to companies established in other Member States, **constitutes indirect discrimination based on the location of the seat of the companies**.

Unlike in other cases,¹ in the present case **turnover does not serve** to determine the basis of assessment of the fee, but only **to identify the undertakings liable** for it. Moreover, **that fee is not progressive in nature** as its amount remains fixed at 90% of the difference between the reference price and the selling price of the materials concerned.

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 Judgments of 3 March 2020, *Vodafone Magyarország*, [C-75/18](#) and *Tesco-Global Áruházak*, [C-323/18](#) (see also press release [No 20/20](#)).