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Judgment of the Court in Case C-271/23 | Commission v Hungary (Rescheduling of cannabis)

Failure of a Member State to fulfil obligations: by voting against the Council's common position regarding the rescheduling of cannabis, Hungary infringed EU law

Hungary, which cannot argue that that common position is unlawful, infringed the European Union's exclusive external competence in that field, and acted in breach of the principle of sincere cooperation

In November 2020, the Council of the European Union adopted a decision ¹ on the common position to be taken by the Member States, on behalf of the European Union, at the subsequent session of the United Nations Commission on Narcotic Drugs. ² The purpose of that common position was, *inter alia*, to amend the scheduling of cannabis and cannabis-related substances in two United Nations Conventions, namely the Convention on Narcotic Drugs, and the Convention on Psychotropic Substances, following a recommendation by the World Health Organization (WHO). When voting on those recommendations, Hungary's representative not only voted in breach of the common position adopted by the Council, but even made a statement contradicting that common position.

In view of that situation, the European Commission brought an action for failure to fulfil obligations against Hungary. According to the Commission, Hungary infringed the European Union's exclusive external competence and the Council decision on the common position, and acted in breach of principle of sincere cooperation. In its defence, Hungary argued, principally, that that Council decision was unlawful.

In its judgment, the Court rules in favour of the Commission and finds that Hungary failed to fulfil its obligations under EU law.

The Court notes that the Council Framework Decision ³ on drug trafficking defines the concept of 'drug' by referring to the two abovementioned United Nations Conventions. ⁴ **Decisions amending the scheduling of substances in those conventions** can affect the application of the penalties laid down in that framework decision, and therefore can affect and alter EU law directly. The adoption of a position to be taken by the Member States on behalf of the European Union with regard to such decisions **thus falls within the European Union's exclusive competence**; ⁵ **Hungary disregarded that competence in the present case by acting in the way it did.** That Member State thereby also infringed the Council decision on the common position that had been adopted in exercise of that exclusive competence.

Under the principle of sincere cooperation, ⁶ the Member States are required to facilitate the achievement of the European Union's tasks and must abstain from any measure which could jeopardise the attainment of common objectives. In the present case, **by voting**, within an international body, **against a common position of the Council, Hungary compromised that principle as well as the principle of unity in the international representation of the European Union and its Member States.** By disassociating itself from the common strategy established within the Council, it weakens the European Union's negotiating power with regard to the other parties to the Convention.

Lastly, the Court states that, **in the context of an action for failure to fulfil obligations, a Member State cannot properly plead that an act**, whatever it may be, of an institution, body, office or agency of the European Union **is unlawful.** That would amount to allowing a Member State to 'take the law into its own hands' by first infringing EU law

and then waiting for the Commission to bring proceedings against it by way of an action for failure to fulfil obligations; that would run counter to the principle of the rule of law and the duties of solidarity which are accepted by the Member States and which form part of the fundamental basis of the legal order of the European Union. The position could be different only where the Member State challenges an act that **contains such particularly serious and manifest defects that it could be categorised as a non-existent act.**

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, the abstract](#) of the judgment is published on the CURIA website on the day of delivery.

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¹ [Council Decision \(EU\) 2021/3](#) of 23 November 2020 on the position to be taken, on behalf of the European Union, at the reconvened sixty-third session of the Commission on Narcotic Drugs, on the scheduling of cannabis and cannabis-related substances under the Single Convention on Narcotic Drugs of 1961, as amended by the 1972 Protocol, and the Convention on Psychotropic Substances of 1971.

² The Commission on Narcotic Drugs is one of the functional commissions of the United Nations Economic and Social Council (ECOSOC).

³ [Council Framework Decision 2004/757/JHA](#) of 25 October 2004 laying down minimum provisions on the constituent elements of criminal acts and penalties in the field of illicit drug trafficking.

⁴ The Single Convention on Narcotic Drugs, 1961, as amended by the 1972 Protocol amending the Single Convention on Narcotic Drugs, 1961, concluded in New York on 30 March 1961 (*United Nations Treaty Series*, Vol. 520, No 7515).

⁵ [Article 3\(2\) TFEU](#).

⁶ The principle of sincere cooperation is enshrined in [Article 4\(3\) TEU](#).