



## PRESS RELEASE No 89/26

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Judgment of the Court in Case C-658/24 | Penny Market

### **Sale of foodstuffs: Hungarian legislation imposing mandatory discounts on large retailers is contrary to EU law**

*That legislation prevents retailers, without proper justification, from freely determining prices and quantities for the sale of certain products on the basis of economic considerations and is contrary to the 'Services' Directive*

In May 2023, against the backdrop of the war in Ukraine, Hungary introduced a scheme of mandatory price reductions to combat the inflation of food prices. Under that scheme, retailers of foodstuffs with an annual turnover in excess of a certain threshold <sup>1</sup> were required, on pain of a fine, to apply, for a specified period ('the promotional period'), a gross retail sale price lower, by at least 15%, than the lowest gross retail sale price which they have applied in the preceding 30 days for certain specified products. In addition, they were also required to have minimum quantities of certain products in stock during that period.

In March 2024, the Hungarian authorities imposed a fine on the retailer Penny Market, an undertaking belonging to the German food retail group REWE, because two of the products covered by the promotional period (the first belonging to the category of apples, the second to the category of mineral waters and soft drinks) were not on the shelves in that store and no sale of those products had been made there on the day of the inspection.

Penny Market challenged the penalty, citing a delay in delivery and the availability of a replacement product, and brought proceedings before the Győr High Court (Hungary) seeking the annulment of the administrative decision. Having doubts as to the compatibility of the scheme of mandatory price reductions with EU law, in particular with the freedom to provide services <sup>2</sup> and the freedom of establishment, <sup>3</sup> as well as with the CMO Regulation <sup>4</sup> and the Directive on services in the internal market, <sup>5</sup> that court referred the matter to the Court of Justice.

#### **The Court finds that the Hungarian scheme imposing mandatory price reductions on large food retailers is contrary to the CMO Regulation and the Directive on services in the internal market.**

In the first place, the Court finds that that scheme **undermines fair competition**, a fundamental component of the CMO Regulation. The obligation to offer certain products for sale at a reduced price and in a specified minimum quantity prevents retailers from freely determining their selling prices and the quantities they wish to sell on the basis of economic considerations.

The Court then examines Hungary's argument that that restriction is justified by the need to combat inflation and the protection of disadvantaged consumers by means of a guaranteed supply of basic foodstuffs at affordable prices. It finds that **the measures in question are not proportionate**, since they do not pursue the objectives sought in a consistent and systematic manner, and are therefore not capable of securing their achievement. The only traders targeted are those with an annual turnover in excess of the predefined threshold, which are generally located in urban areas rather than in rural areas. A significant proportion of disadvantaged consumers will therefore, in practice, find it difficult to access foodstuffs at reduced prices.

In the second place, the Court emphasises that it is for the Hungarian court to determine whether the contested scheme

constitutes, within the meaning of the Directive on services in the internal market, **indirect discrimination against companies established outside Hungary**. In that regard, it would have to be held that there is indirect discrimination prohibited by that directive if, following verification by the Hungarian court, it transpired that large Hungarian retail chains were exempt from the legislation, first, because they operate under a franchise and are therefore not required to aggregate their turnover to verify whether they have exceeded the predefined threshold and, second, because they carry on their activities under a different code of the statistical classification of economic activities than that covered by the contested scheme.

In any event, even if the Hungarian court were to find that the legislation in question was not discriminatory, that legislation does not comply with the requirements of the Directive on services in the internal market because, as has been established with regard to its incompatibility with the CMO Regulation, it is not capable of ensuring the attainment of its objectives. **That legislation is therefore also contrary to the Directive on services in the internal market.**

**NOTE:** A reference for a preliminary ruling allows the courts and tribunals of the Member States, in disputes which have been brought before them, to refer questions to the Court of Justice about the interpretation of EU law or the validity of an EU act. The Court of Justice does not decide the dispute itself. It is for the national court or tribunal to dispose of the case in accordance with the Court's decision, which is similarly binding on other national courts or tribunals before which a similar issue is raised.

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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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<sup>1</sup> Namely, a net turnover in excess of 1 000 million forint (HUF) (approximately €2 500 000) in 2021.

<sup>2</sup> Article 56 TFEU.

<sup>3</sup> Article 49 TFEU.

<sup>4</sup> [Regulation \(EU\) No 1308/2013](#) of the European Parliament and of the Council of 17 December 2013 establishing a common organisation of the markets in agricultural products and repealing Council Regulations (EEC) No 922/72, (EEC) No 234/79, (EC) No 1037/2001 and (EC) No 1234/2007, as amended by Regulation (EU) 2021/2117 of the European Parliament and of the Council of 2 December 2021.

<sup>5</sup> [Directive 2006/123/EC](#) of the European Parliament and of the Council of 12 December 2006 on services in the internal market.