

**Request for a preliminary ruling from the Bundesgerichtshof (Germany) lodged on 31 March 2017 —  
Land Nordrhein-Westfalen v Dirk Renckhoff**

(Case C-161/17)

(2017/C 231/06)

*Language of the case: German*

**Referring court**

Bundesgerichtshof

**Parties to the main proceedings**

*Applicant:* Land Nordrhein-Westfalen

*Defendant:* Dirk Renckhoff

**Question referred**

Does the inclusion of a work — which is freely accessible to all internet users on a third-party website with the consent of the copyright holder — on a person's own publicly accessible website constitute a making available of that work to the public within the meaning of Article 3(1) of Directive 2001/29/EC <sup>(1)</sup> if the work is first copied onto a server and is uploaded from there to that person's own website?

<sup>(1)</sup> Directive 2001/29/EC of the European Parliament and of the Council of 22 May 2001 on the harmonisation of certain aspects of copyright and related rights in the information society, OJ 2001 L 167, p. 10.

---

**Action brought on 5 April 2017 — Commission v Hungary**

(Case C-171/17)

(2017/C 231/07)

*Language of the case: Hungarian*

**Parties**

*Applicant:* European Commission (represented by: V. Bottka and H. Tserepa-Lacombe, acting as Agents)

*Defendant:* Hungary

**Form of order sought**

The Commission claims that the Court should:

— declare that the national mobile payment system established and maintained by Hungary, governed by Law CC of 2011 and Governmental Implementing Decree No 356/2012 of 13 December 2012, which creates a monopoly by granting exclusive rights to Nemzeti Mobilfizetési Zrt. and impedes entry into the wholesale mobile payments market, which was previously open to competition, and the establishment of which, moreover, was not necessary or proportional, is contrary:

— first, to Article 15(2)(d) and Article 16(1) of Directive 2006/123/EC, <sup>(1)</sup> and

— secondly, to Articles 49 TFEU and 56 TFEU.

— order Hungary to pay the costs.

### Pleas in law and main arguments

The a nemzeti mobilfizetési rendszerről szóló, 2011. április 1-jei CC. törvény (Law CC of 1 April 2011 concerning the national mobile payment system; 'the Law') changed the legal framework for mobile payment services with effect from 1 April 2013, although it only became binding as from 2 July 2014. The Law defines centralised mobile commerce services in the following sectors: (a) public car park services; (b) granting access to use public roads; (c) transport of persons carried out by a State undertaking; (d) other services provided by State bodies. Of the services mentioned, in practice it has only been possible, up to the present, to make mobile payments in Hungary in the sector of public car park services and in the sector of granting access to use public roads (the 'e-matrica' electronic toll sticker and the 'HU-GO' system). Nevertheless, the present proceedings concern the four sectors governed by the Law.

According to the Commission, as regards public car park services, the Company Nemzeti Mobilfizetési Zrt. carries out essentially the same activity as that carried out by mobile payment service providers under the previous system, except that it enjoys an exclusive right to enter into contracts with car park operators and its fees are regulated. The same is true as regards the sector of granting access to use public roads, since Nemzeti Mobilfizetési Zrt. is the sole services provider which maintains a contractual relationship with the public services provider and may directly sell the authorisation to use the road. Accordingly, in those two sectors, the other providers of mobile services and mobile telephone services may only operate as resellers.

Consequently, the establishment of the national mobile payment system and the exclusive rights granted to Nemzeti Mobilfizetési Zrt. impede, both as regards Hungarian and foreign undertakings, entry into the wholesale mobile payment market — and, therefore, into the market of services offered, pursuant to contractual relationships with the provider of the public car park services or other public services, to other providers which resell mobile payment services — which was previously open to competition. Thus, according to the Commission, the rules in relation to the national mobile payment system, taken as a whole, give rise to discrimination and are contrary to the freedom of establishment (infringement of Article 15 of Directive 2006/123 and of Article 49 TFEU). In addition, those rules are also contrary to the freedom to provide services (infringement of Article 16 of Directive 2006/123 and of Article 56 TFEU), since the exclusive rights granted to Nemzeti Mobilfizetési Zrt. restrict the provision of cross border services. In relation to the other centralised mobile commerce services, in respect of which it is not yet possible to make mobile payments in Hungary, the Law establishes the same exclusive right in favour of Nemzeti Mobilfizetési Zrt. and the legal analysis above is therefore equally valid.

In accordance with the relevant provisions of the TFEU and Directive 2006/123, restrictions on the freedom of establishment and the freedom to provide services may be imposed only where they are not discriminatory and serve the public interest and moreover, where they fulfil the conditions of necessity and proportionality. In the Commission's view, the arguments put forward by Hungary are not capable of justifying the restrictions imposed by the Law, since they do not meet the requirements of necessity and proportionality.

---

(<sup>1</sup>) Directive 2006/123/EC of the European Parliament and of the Council of 12 December 2006 on services in the internal market (OJ 2006, L 376, p. 36).

---

**Request for a preliminary ruling from the Juzgado de Primera Instancia No 1 de Barcelona (Spain)  
lodged on 7 April 2017 — Bankia, S.A. v Alfonso Antonio Lau Mendoza, Verónica Yuliana Rodríguez  
Ramírez**

(Case C-179/17)

(2017/C 231/08)

*Language of the case: Spanish*

### Referring court

Juzgado de Primera Instancia No 1 de Barcelona