

Appeal brought on 12 July 2018 by Hungary against the judgment of the General Court (Ninth Chamber) delivered on 25 April 2018 in Joined Cases T-554/15 and T-555/15, Hungary v European Commission

(Case C-456/18 P)

(2018/C 301/29)

Language of the case: Hungarian

Parties

Appellant: Hungary (represented by: Z. Fehér and G. Koós, acting as Agents)

Other party to the proceedings: European Commission

Form of order sought

By its appeal, Hungary claims that the Court of Justice should:

- set aside the judgment of the General Court of 25 April 2018 in Joined Cases T-554/15 and T-555/15;
- annul in part Commission Decision C(2015) 4805 of 15 July 2015 on the health contribution of tobacco industry businesses in Hungary, in so far as that decision orders the suspension of the application of both the progressive tax rate of the health contribution and of the reduction of that contribution in the case of investments, as provided for in a *dohányipari vállalkozások 2015. évi egészségügyi hozzájárulásáról szóló 2014. évi XCIV. törvény* (Law No XCIV of 2014 on the health contribution for 2015 of tobacco industry businesses), adopted by the Hungarian Parliament;
- annul in part Commission Decision C(2015) 4808 of 15 July 2015 on the 2014 amendment of the Hungarian food chain inspection fee in so far as that decision orders the suspension of the application of the progressive rate of the food chain inspection fee;
- order the Commission to pay the costs of the proceedings.

Grounds of appeal and main arguments

The Hungarian Government essentially bases its appeal on three arguments, in accordance with the criteria developed by the Court of Justice in its case-law.

First, the Hungarian Government bases its appeal on the contention that the General Court misapplied the law in the examination of the connected pleas in law.

Second, the General Court misconstrued, in respect of the obligation to state reasons, Article 296 TFEU and Article 41(1) of the Charter.

Third, the Hungarian Government alleges an error of assessment which led to the complaints set out by Hungary not being properly considered and led to an inappropriate interpretation of the arguments put forward in its action.

According to the Hungarian Government, the Commission failed fully to respect the relevant procedural rules and the duty to state reasons when it adopted the contested decisions, the facts were not accurately stated and the Commission made a manifest error of assessment and exceeded its powers. Although the examination of all of the foregoing was within the jurisdiction of the General Court, the latter failed to carry out such an examination or failed to do so properly.

The Hungarian Government submits that, as a consequence, the General Court first misinterpreted Article 11(1) of Regulation (EC) No 659/1999⁽¹⁾ and misapplied the case-law of the Court of Justice concerning that article. Second, the General Court made an error of assessment when it incorrectly assessed - according to the Hungarian Government - the argument put forward in relation to the requirements of the principles of proportionality and equal treatment and wrongly drew the conclusion that consistency with earlier Commission decisions and with its practice was not essential from the perspective of legal certainty. Similarly, the General Court disregarded the argument of the Hungarian Government regarding whether the conditions for State aid were fulfilled and also ignored that relevant argument for the purposes of the suspension. Finally, the General Court also failed to fulfil its obligation to state reasons by drawing the conclusion, contrary to the view expressed by the Commission throughout the proceedings, that a condition for ordering the suspension of the decisions was that Hungary did not intend to implement them and the latter had been established in a satisfactory manner by the Commission in its decisions.

⁽¹⁾ Council Regulation (EC) No 659/1999 of 22 March 1999 laying down detailed rules for the application of Article 93 of the EC Treaty (OJ 1999 L 83, p. 1).