



Commission refers Hungary to the European Court of Justice of the EU over the Higher Education Law

Brussels, 7 December 2017

Today, the European Commission decided to refer Hungary to the Court of Justice of the European Union on the grounds that its Higher Education Law as amended on 4 April 2017 disproportionately restricts EU and non-EU universities in their operations and needs to be brought back in line with EU law.

The Commission has made this referral on the grounds that the law as amended is not compatible with the freedom for higher education institutions to provide services and establish themselves anywhere in the EU. In addition, the Commission also remains of the opinion that the new legislation runs counter to the right of academic freedom, the right to education and the freedom to conduct a business as provided by the Charter of Fundamental Rights of the European Union and the Union's legal obligations under international trade law (the General Agreement on Trade in Services, [GATS](#), in the framework of the World Trade Organisation, WTO).

The Commission launched the infringement procedure against Hungary in April 2017. As Hungary maintained its position in their replies to the [letter of formal notice](#), [reasoned opinion](#) and [additional reasoned opinion](#) and didn't bring the Higher Education Law in line with EU law, the Commission has decided to refer Hungary to the Court of Justice of the EU.

Background

On 4 April 2017, the Hungarian Parliament adopted a new act amending the Higher Education Act of 2011. The changes added new requirements as regards the name of foreign higher education institutions, the need for bilateral agreements between Hungary and non-European Economic Area (EEA) countries of origin of higher education institutions, the need to provide higher education services also in the country of origin, and additional requirements for the registration and authorisation of higher education services in Hungary.

On [12 April the Commission held a discussion](#) on legal issues related to Hungary. On 26 April, the Commission decided to take legal action and sent a [letter of formal notice](#) to the Hungarian Government on the Hungarian Higher Education Law. The Hungarian authorities responded on 25 May.

On [13 July](#), the Commission took another step in the infringement procedure and sent a reasoned opinion to Hungary, requesting the country to bring its legislation in line with EU law. Hungary replied to the Commission on 14 August.

On [4 October](#), the Commission followed up by issuing an additional reasoned opinion, providing further clarifications on the Commission's concerns about the non-compatibility of the Higher Education Act with the EU's obligations under the GATS. Hungary replied on 18 October, acknowledging the clarification but maintaining its prior position that the modifications do not constitute a violation of EU law.

On 11 November, Hungary informed the Commission that the deadline for fulfilling the new requirements under the Higher Education Act has been extended by one year. Foreign higher education institutions must therefore meet the new conditions by 1 January 2019.

Following the assessment of all Hungarian replies, the Commission upholds its view that the modified law violates the freedom to provide services (Article 56 [TFEU](#)); the freedom of establishment (Article 49 [TFEU](#)); [Directive 2006/123/EC](#) on services in the internal market (Article 16); the right of academic freedom, the right to education and the freedom to conduct a business as provided by the Charter of Fundamental Rights of the European Union (Articles 13, 14, 16 respectively); as well as the Union's legal obligations under international trade law (the General Agreement on Trade in Services – GATS – in the framework of the World Trade Organisation, WTO).

The Court of Justice of the EU has consistently held that courses offered by educational establishments essentially financed by private funds constitute economic activities in the meaning of the Treaty. Education activities and courses financed essentially out of private funds are also covered by [Directive 2006/123/EC](#), regardless of whether the establishments offering courses are profit-making or not and irrespective of whether the financing is provided principally by the pupils or their parents.

The Commission will continue to use all available means under the Treaties to uphold the EU's shared values and to engage in a broad political dialogue with the Hungarian authorities, the other Member States and the European Parliament.

For More Information

- On the key decisions in the December 2017 infringements package, see full [MEMO/17/4767](#).
- On the general infringements procedure, see [MEMO/12/12\(an info graph\)](#).
- On the [EU infringements procedure](#).

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