



HUNGARIAN FOOD SUPPLY SECURITY MEASURES AND THEIR ASSESSMENT UNDER EU LAW

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ABSTRACT

In the new global order, the European Union is increasingly emerging as a geopolitical actor, while global crises – such as the pandemic, energy and raw material supply disruptions, and armed conflicts – have a direct impact on agricultural and food supply chains. In this environment, Member States are increasingly using national legal instruments aimed at preserving food supply security, while potentially coming into conflict with the principles of the EU internal market. The presentation examines how Member States' restrictive measures adopted with reference to food supply security can be assessed in the light of EU law and in particular the established case law of the Court of Justice of the European Union. The analysis is carried out through three different instruments of Hungarian regulatory practice affecting EU fundamental freedoms: official food price regulation, state control over agricultural and food industry investments, and export restriction and notification mechanisms.

The focus of the analysis is on how these national measures fit into the EU requirements on the free movement of goods and capital and the freedom to conduct a business, and how they can be interpreted within the framework of the justification tests consistently applied in EU case law – in particular, justification based on public interest, necessity and proportionality. The examined Hungarian agricultural and food supply measures are not only national crisis management tools, but also represent a “pushing” of the legal boundaries of the EU internal market. These measures highlight the structural tension that develops between the market-building logic of EU integration and the Member State autonomy (sovereignty) that increases in crisis situations, and which may play a decisive role in the development of the future global and internal governance model of the European Union. The analysis is facilitated by the fact that direct or indirect CJEU judgments have been issued in all three areas concerned, thus revealing the interpretation directions of the related EU law.

Keywords: Food supply security, Member state restrictions, Global crisis phenomena, State intervention, Official price regulation

1. INTRODUCTION

One of the defining objectives of European integration was to create lasting stability and predictability through economic and political cooperation among the Member States, with particular regard to access to essential resources and goods. One of the earliest and most significant manifestations of this objective was the creation of the Common Agricultural Policy (CAP), which served not only to support farmers but also to guarantee the security of food supply¹ by deepening solidarity and integration between Member States. Security of supply therefore emerged from the outset as a community-level objective,² the implementation of which required the strengthening of common regulatory frameworks.

In contrast, a trend can be observed today in which some Member States – citing global crisis situations, such as the COVID-19 pandemic or the consequences of the Russian-Ukrainian war – are starting to introduce unilateral measures based precisely on security of supply.³ These measures often result in restrictions on common EU regulatory frameworks and contribute to the fragmentation of the internal market, creating tension between national sovereignty and the principles of Community integration. This phenomenon highlights the contradiction that, while security of supply was originally a reason for deepening integration, in current practice it is increasingly becoming a means of justifying exceptions to common rules. The question is therefore not only economic or political, but also fundamentally legal: how far the regulatory autonomy of Member States may extend in times of crisis without undermining the unity of EU law and the original objectives of common policies.⁴

Hungarian legislation of recent years can serve as a suitable basis for conducting this investigation, as since the mid-2010s, Hungary has operated under various forms of emergency governance. Under the auspices of these special legal regimes, citing the threat to the country's security of supply, a large number of laws have been enacted that are incompatible with EU legislation. This study examines three

¹ European Commission: Drivers of food security, SWD(2023) 4 final, Brussels 4 January 2023, p. 3, Available at: [https://commission.europa.eu/system/files/202301/SWD_2023_4_1_EN_document_travail_service_part1_v2.pdf], Accessed 05 February 2026.

² Mata, F.; Dos-Santos, M.J.P.L., *European Citizens' Evaluation of the Common Agricultural Policy; Sustainability* 2024, Vol. 16, Issue 10, 2024.

³ For example, different types of regulatory price regulation in some Member States - Van Rompuy, B., *Territorial Supply Constraints: A Hidden Driver of Grocery Price Inflation?*, European Competition and Regulatory Law Review, Vol. 7, Issue 3, 2023, p. 140.

⁴ For the effectiveness of joint action, see: Pocztka-Wajda, A.; Pocztka, W., *Stability of Food Security in EU Member States – Does the Common Agricultural Policy Ensure Resilience of Food Systems During Crises*, *Ekonomista*, 2024, No. 4, pp. 395–419.

Hungarian regulatory instruments relating to food supply security that challenge the boundaries of EU internal market law.

2. EMERGENCY GOVERNANCE IN HUNGARY

Until the mid-2010s, Hungary's system of special legal orders largely operated within the framework of the classical constitutional model,⁵ in which the application of emergency powers were regarded as exceptional and temporary instruments. The Fundamental Law of Hungary listed the state of emergency among the cases of special legal order, which could be declared primarily in the event of natural or industrial disasters.⁶ The detailed rules were determined by Act CXXVIII of 2011 on the Protection of Natural Resources, which specified the conditions for declaring a state of emergency and the scope of applicable extraordinary measures. Based on this construction, the function of the state of emergency was primarily to accelerate disaster management intervention, not as a general governance technique.

However, the migration crisis that unfolded in 2015 induced new types of legal responses. The legislator did not respond by applying the special legal categories under the Fundamental Law, but introduced a separate statutory emergency regime known as the crisis situation caused by mass immigration.⁷ Its application was not closely linked to a single, specific event, but could be repeatedly extended in time if the conditions specified by the legislator were met. As a result, the "crisis situation caused by mass immigration" became a permanent, quasi-extraordinary legal regime in practice.

The real turning point in Hungarian emergency governance was the COVID-19 pandemic, following which the Government made extensive use of the emergency authorization under the Fundamental Law in the spring of 2020 for the first time. The declaration of the state of emergency was carried out by Government Decree 40/2020. (III. 11.), which established a special legal order covering the entire ter-

⁵ Gárdos-Orosz, F., Burján, E., *From Constitutional Risk Management to Constitutional Risk Management (Emergency Law Misuse) in Hungary*, Cambridge University Press, 03 February 2025, p. 423, Available at: [<https://www.cambridge.org/core/journals/european-journal-of-risk-regulation/article/from-constitutional-risk-management-to-constitutional-risk-management-emergency-law-misuse-in-hungary/B3EA36CFA4E5842A8DE1EFAE37146F98>], Accessed 21 April 2026.

⁶ Former Article 53(1) of the Fundamental Law of Hungary, Hungarian Official Gazette, No. 43/2011 (25 April 2011).

⁷ Merkl, Z., *Crisis Situation Caused by Mass Immigration – Amendments to the National Defense Act and Other Legislative Changes in the Use of Weapons*, Academic Journal of Internal Affairs (Belügyi Szemle), 2016, No. 6, p. 110., Available at: [<https://belugyiszemlejournal.org/index.php/belugyiszemle/article/view/291/291>], Accessed 2 April 2026.

ritory of the country in view of the consequences of the COVID-19 epidemic.⁸ However, one of the most important features of the 2020 state of emergency was not merely the fact of the declaration, but the related legal construction of authorization.⁹ The Parliament adopted Act XII. 2020 on the Protection against Coronavirus, which – in contrast to previous practice – granted the Government the authority to maintain the effect of the emergency decrees without any time limit.¹⁰ In the second phase of emergency governance, the legislator modified this model and switched to a system of time-limited but repeatedly extendable authorization.

In the period between 2020 and 2022, the economic interventions that later became defining elements of emergency governance began to appear. With this, the function of the emergency finally went beyond the narrow framework of crisis management and became an integral tool of economic policy governance.

Following the conclusion of the state of emergency legislation related to the COVID-19 pandemic, the dominance of the ordinary legal order did not return to the Hungarian legal system, but rather special legal order governance entered a new phase, now explicitly focused on the economy and security of supply. The direct legal basis for this turn was created by Act VI of 2022¹¹ on the management of the armed conflict in a neighbouring state and its humanitarian consequences, which authorized the Government to declare a state of emergency in view of these circumstances. The function of the state of emergency shifted definitively from classic crisis management to economic and security of supply governance, and the focus of state of emergency legislation shifted to interventions in inflation management, market regulation and strategic resource protection.

Overall, emergency governance has remained in force in Hungary almost continuously since 2020., which was immediately terminated by the new government elected on April 12, 2026, on May 14, 2026.¹²

The following chapters will analyze three Hungarian regulations in different areas, which were created on the one hand with reference to the emergency legal basis,

⁸ Section 1 of Government Decree No. 40/2020 (III. 11.) on the Declaration of a State of Emergency, Hungarian Official Gazette, No. 39/2020.

⁹ Mészáros, G., *Rethinking the Theory of State of Exception after the Coronavirus Pandemic? – The Case of Hungary*, Regional Law Review, 2020, No. 12, pp. 96–97.

¹⁰ Mészáros, G., *Carl Schmitt in Hungary: Constitutional Crisis in the Shadow of Covid-19*, MTA Law Working Papers, No. 17, 2020, pp. 11–12., Available at: [https://real.mtak.hu/121759/1/2020_17_Meszaros.pdf], Accessed 02 June 2026.

¹¹ Act VI of 2022 on the prevention of the consequences in Hungary of an armed conflict or humanitarian disaster in a neighbouring country.

¹² Horváth, F., Blackburn, G., *Hungary's Orbán-era wartime state of emergency ended*, Available at: [<https://www.euronews.com/my-europe/2026/05/14/hungarys-orban-era-wartime-state-of-emergency-ended-pm-peter-magyar-says>], Accessed 02 June 2026.

and on the other hand which restrict three different EU legal freedoms – enterprise and pricing, establishment, free movement of goods. In view of this, they are suitable for examining where the limits of Member State regulatory autonomy lie in otherwise harmonised areas of EU law when measures are justified by concerns relating to security of supply.

3. FORMS OF STATE PRICE INTERVENTION IN HUNGARY

During the period of emergency governance following 2020, Hungary adopted two major forms of intervention in retail food pricing. Several forms of legislative influence on commercial prices are known,¹³ and the two laws described in the following subsection are based on different legal bases and different legal instruments.

3.1. Regulation of Government-Priced Products

Government Decree 6/2022¹⁴ – in force since 1 February 2022¹⁵ – introduced the category of so-called price-capped products, citing the authorisation based on the fight against the coronavirus pandemic. The aim of the decree was to protect disadvantaged consumers and combat inflation by ensuring the supply of affordable basic foodstuffs.

In the case of price-capped products, retail prices were capped at their 15 October 2021 level. In addition, in order to avoid retailers removing the affected products from their range, it was also prescribed that retailers are obliged to keep the products in stock in such quantities.¹⁶ When the regulation came into force, its material scope covered the following foodstuffs: granulated sugar (white sugar), fine wheat flour BL 55, refined sunflower cooking oil, domestic pork legs (including bone-in, skin-on, filleted, cut, sliced or minced, whether or not sold pre-packaged, fresh, chilled, frozen), chicken breast, chicken thighs - back, whole or separate rump and wing tips (including bone-in, skin-on, filleted, cut, sliced or minced,

¹³ Justin-Damien, G., Price Controls – Good Intentions, Bad Outcomes, Policy Research Working Paper, No. 9212, World Bank, 2020, Available at: [<https://documents1.worldbank.org/curated/en/735161586781898890/pdf/Price-Controls-Good-Intentions-Bad-Outcomes.pdf>], Accessed 02 June 2026.

¹⁴ Government Decree No. 6/2022 on the different application of Act LXXXVII of 1990 on the establishment of prices during the state of emergency.

¹⁵ Although the Decree has not been formally repealed, it has contained no operative provisions since 1 August 2023.

¹⁶ According to Government Decree No. 6/2022, paragraph 2 (1): „The trader is obliged to distribute the products listed in Annex 1 on 15 October 2021 and to sell at least the average daily quantity for 2021 for the given day of the week.”.

whether or not sold pre-packaged, fresh, chilled, frozen), ultra-high-temperature heat-treated cow's milk with a fat content of 2.8% by weight.

Regarding Government Decree 6/2022, it should be emphasized that its adoption and application took place during a period in which food price inflation in Hungary was the highest in the European Union.¹⁷ This inflation peaked in January 2023.¹⁸

The regulation was the subject of a preliminary ruling procedure by the CJEU in case C-557/23.¹⁹ The basis of the case was the imposition of a consumer protection fine, which was imposed on the grounds that a quantity of a product with an official price was not available in one of the commercial units of SPAR Hungary Kft. in accordance with the regulation. It is important to note that the store had the product in question, and even a closing stock remained that day, and no consumer complaint was filed. In its appeal against the fine, SPAR Hungary Kft. argued that consumer needs were continuously met, thus the objective set out in the regulation was achieved.

During its proceedings, the CJEU examined the conformity of the Hungarian regulation with Regulation (EU) No 1308/2013²⁰ on the common organisation of the markets in agricultural products. In this regard, it referred to Case C-400/19. The Court of Justice has referred to the principle-based findings of the judgment in Case C-311/01 *Commission v Hungary*,²¹ which was also a case of price regulation by the authorities. The following were highlighted: (1) the free determination of the selling price on the basis of free competition is an element of Regulation (EU) No 1308/2013 and is an expression of the principle of the free movement of goods under conditions of effective competition; (2) the common market organisation does not prevent Member States from applying national rules which pursue objectives of general interest other than those of the Regulation, even if those rules may affect the functioning of the internal market in the sector concerned,

¹⁷ Hungarian National Bank: Domestic food inflation, underlying factors (MNB In-depth Analyses), 4-5. p., Available at: [\[https://www.mnb.hu/letoltes/mnb-melyelemzes-a-hazai-elelmiszerinflacio-mogott-meghuzodotenyezok.pdf\]](https://www.mnb.hu/letoltes/mnb-melyelemzes-a-hazai-elelmiszerinflacio-mogott-meghuzodotenyezok.pdf) Accessed 05 September 2025.; Matthews, A., *Food price situation in Europe*, Studies in Agricultural Economics, Vol. 125, 2023, p. 62.

¹⁸ Csorba, N., *Hungarian National Bank: Inflation on a declining path*, Foreign Affairs, No. 1, 2023, p. 68.

¹⁹ Case C-557/23. *SPAR Magyarország Kft. v Bács-Kiskun Vármegyei Kormányhivatal* [2024] ECLI:EU:C:2024:737.

²⁰ Regulation (EU) no 1308/2013 the European Parliament and of the Council, 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, [2013] OJ L 347.

²¹ Case C-557/23. paras 37-38.

provided that those rules are suitable for securing the attainment of the objective pursued and do not go beyond what is necessary to attain that objective.²² In relation to the latter condition, the CJEU has stated that national legislation is only suitable for securing the attainment of the objective pursued if it is genuinely intended to attain it in a coherent and systematic manner.²³

Overall, the CJEU found in relation to Government Decree 6/2022 that “the harm to traders’ access to the free market under conditions of effective competition and, consequently, the disruptions throughout the supply chain caused by the official prices imposed on those traders and the obligation on the latter to sell a certain quantity of the products concerned, exceed what is necessary to achieve the objectives pursued by that Government Decree.”²⁴

The judgment was delivered on September 12, 2024, when the legislation under review was already out of force, but its findings of principle should always serve as a guideline.

3.2. The 2025 Margin-Cap Regulation

The currently effective form of official price regulation, the so-called margin-stop regulation, was adopted in March 2025. The legal basis of Government Decree 42/2025. (III. 11.) on the measures necessary to reduce food prices is the state of emergency introduced in view of the armed conflict and humanitarian disaster in Ukraine, as well as in order to prevent and manage their consequences in Hungary. According to the preamble, the purpose of the decree is “*to reduce food prices in order to protect Hungarian families*”.

The scope of the regulation covers a specific range of basic foodstuffs intended for daily consumption — such as cow’s milk, white granulated sugar, BL 55 fine flour, poultry meat, eggs, vegetable and fruit categories. One of the peculiarities of the new regulation is that the margin regulation is not a direct price stop, but a ratio-based restriction. The basic unit of the regulation is the transfer price invoiced by the supplier or, in the case of own production, the cost price. This item can be increased by a maximum of a specified percentage margin, which ensures that the distributor can incorporate cost increases — for example, energy or logistics fees — into the price, albeit to a limited extent.

²² Case C-557/23. paras 37-38.

²³ Case C-557/23. para 45. – cited judgment: Case C-333/14. *Scotch Whisky Association and Others v The Lord Advocate and The Advocate General for Scotland* [2015] ECLI:EU:C:2015:845.

²⁴ Case C-557/23. para 47.

In addition to the applicable margin, the regulation also contains a quantitative obligation, according to which if the trader sold a product belonging to the regulated product category in the given store on the day before the regulation came into force, he is “*obliged to sell at least the average daily quantity of the given product sold by him in 2024 in such a way that the service of customers is continuously ensured.*”²⁵

There has been no CJEU ruling on the current regulation, however, based on consistent case law, it may reasonably be argued that shifting the negative effects of inflation exclusively to retail distributors, in such a way that the continuous extension of the scope of the regulation makes the application of the law unpredictable, does not meet the requirement of proportionality.²⁶

4. SCREENING OF FOREIGN DIRECT INVESTMENTS IN STRATEGIC SECTORS

In September 2025, the Ministry of National Economy issued²⁷ a statement stating that the Hungarian State had prohibited the foreign acquisition of Alföldi Tej Kft.²⁸ The Ministry’s statement stated the following reasons:

“Alföldi Tej Kft. currently accounts for nearly 20% of domestic raw milk purchases. Due to its significant market share, foreign ownership acquisition could cause significant market disruption in domestic milk production and purchases, as well as a high risk of security of supply.

If the Hungarian-owned Alföldi Tej Kft. were to fall into foreign hands, the performance of the domestic processing industry would decrease: raw milk would be exported and dairy products produced abroad would be purchased at higher prices than before, and well-known and popular products would disappear from the shelves of domestic stores.

The prohibition of the implementation of the legal transaction is in the interest of the security of supply for the population.”

²⁵ Government Decree No. 42/2025 (III. 11.), Section 2 (5).

²⁶ Immediately prior to the conclusion of this study, on May 13, 2026, the new government repealed the legislation.

²⁷ Ministry of National Economy, The Hungarian State Prohibited the Foreign Acquisition of Alföldi Tej Kft. [<https://kormany.hu/hirek/a-magyar-allam-megtiltotta-az-alfoldi-tej-kft-kulfoldi-felvasarlasat>] Accessed 30 March 2026.

²⁸ The acquisition would have involved 100% ownership of the company by the Greek Hellenic Dairies.

The regulation of foreign direct investments²⁹ provides one of the most complex examples of Hungarian emergency governance, as it was implemented at several, overlapping normative levels.³⁰ The statutory control regime established by Act LVIII of 2020³¹ was supplemented by Government Decree 561/2022 (XII. 23.)³² for the post-2022 emergency period, which expanded the existing framework and adapted it to security of supply considerations. The system was finally integrated at the statutory level in 2025 with the adoption of Act LVIII of 2025, which provided for the elevation of the emergency decrees issued in view of the armed conflict in Ukraine to the statutory level. The legislative justification for the investment control therefore ranged from ensuring a regulatory transition related to extraordinary measures taken during the state of emergency to prevent the human epidemic caused by the COVID-19 infection in 2020 and to address its consequences, to the state of emergency due to the armed conflict in Ukraine.

The general licensing mechanism established by Act LVIII of 2020 was supplemented in the emergency period after 2022 primarily by Government Decree 561/2022 (XII. 23.) and its amendments in such a way that security of supply aspects, including those related to food supply, became more prominent.

The purpose of the regulation of foreign direct investments is the state control of the acquisition of a certain amount of shares by foreign investors in so-called strategic companies. According to Section 36(2)(3) of Act L of 2025 currently in force, a strategic company is “*a limited liability company, a private limited company, a public limited company or a higher education institution as a legal entity with its registered office in Hungary, the main or additional activity of which falls within the strategic sectors specified in Annex 1, in particular the energy, transport and communication sectors, and the sectors referred to in Article 4(1)(a) to (e) of Regulation (EU) 2019/452 of the European Parliament and of the Council of 19 March 2019 establishing a framework for the screening of foreign direct investments into the Union.*”

²⁹ Regarding the regulation of foreign direct investments, Cheng Bian identifies three fundamental, typical problems from the entrepreneurial side: unpredictability, procedural uncertainty, and lack of transparency – see Bian, C., *Foreign Direct Investment Screening and National Security: Reducing Regulatory Hurdles to Investors Through Induced Reciprocity*, The Journal of World Investment & Trade, Vol. 22, 2021, p. 567.

³⁰ For other dimensions of foreign investment control, see: Kovács, B., *Investment control at the intersection of data protection and competitiveness*, Economy and Law, Economy and Law, No. 11–12, 2025, pp. 36–42. For the EU regulation of foreign direct investment screening, see: Vig, Z., *The Regulation of Screening of Foreign Direct Investments in the European Union*, Pro Futuro, No. 4, 2020, pp. 9–24.

³¹ Act LVIII of 2020 on transitional rules related to the end of the state of emergency and on epidemiological preparedness.

³² Government Decree 561/2022. (XII. 23.) on the different application of certain provisions necessary for the economic protection of Hungarian business associations during the state of emergency.

Annex 1 referred to in the definition also includes the food and agricultural sector, within which the scope of the law covers the following sectors: food production; beverage production; tobacco production; crop production, animal husbandry, game management and related services; forestry; fishing and aquaculture; and the leasing and operation of agricultural and forestry land.

In the case of foreign direct investments falling within the scope of the law, a notification must be made to the minister responsible for the domestic economy, based on which the minister examines, among other things, whether “*there is a harm or threat to the state interests, public security, public order of Hungary, or the possibility of their occurrence, with particular regard to the security of the provision of basic social needs (...)*.” In the event of harm to an interest specified in a law, the minister makes a prohibitive decision, which he is obliged to justify.

The compatibility of the Hungarian investment-screening regime with EU law was examined by the CJEU in Case C-106/22 Xella Magyarország,³³ regarding one of the acquisitions. Although this judgment was not related to the currently effective legislation, but to the first legislation of the licensing system, i.e. Act LVIII of 2020, it nevertheless contains a number of principles that are also relevant to the compatibility its compatibility with the legislation currently in force.

The subject matter of the legal transaction serving as the basis for the procedure was the acquisition of a company (Janes és Társa Kft.) based in Hungary, whose main activity is the extraction of gravel, sand and clay. This acquisition was subject to investment control due to the fact that the direct and indirect owners of the buyer, Xella Magyarország Építőanyagipari Kft., also based in Hungary, were identifiable as EU and non-EU companies and private individuals. The Minister, acting on the basis of the mandatory notification, made a decision prohibiting the purchase contract, highlighting in the justification of the decision that (a) safe and predictable extraction and supply of raw materials is of strategic importance, (b) the Covid-19 pandemic has made it clear that serious disruptions can occur in the operation of global supply chains in a short time, which could have a negative impact on the national economy, (c) in the case of the production of construction additives – such as sand, gravel and crushed stone – the market share of foreign-owned domestic manufacturers is already decisive, (d) if Janes és Társa Kft. becomes indirectly owned by a company registered in Bermuda, this would pose a risk in the long term to the security of supply of raw materials to the construction industry, especially in the region in which this company is based, given

³³ Case C-106/22 *Xella Magyarország Építőanyagipari Kft. v Innovációs és Technológiai Miniszter* [2023] ECLI:EU:C:2023:568.

that the company has a 20.77% market share in this region, (e) the proportion of domestically owned enterprises decreases when a strategic company falls into foreign hands, which, broadly interpreted, may harm “state interests”.³⁴

The questions submitted to the European Court of Justice raised the question of the application of Regulation (EU) 2019/452 of the European Parliament and of the Council of 19 March 2019³⁵ establishing a framework for the screening of foreign direct investments into the Union. As regards the scope of that regulation, the CJEU held that it did not cover the case at issue, given that it was limited to investments within the Union made by undertakings incorporated or otherwise constituted in accordance with the laws of a third country.³⁶ It therefore interpreted the case in EU law not on the basis of Regulation (EU) 2019/452, but on the basis of the freedom of establishment laid down in Article 54 of the Treaty on the Functioning of the European Union (TFEU), referring to settled case-law.³⁷ According to this, national legislation which, by its purpose, applies to holdings which enable a certain degree of influence to be exercised over the decisions of a company and to determine its activities falls within the scope of the rules on freedom of establishment and not on the freedom of movement of capital.³⁸ Freedom of establishment was relevant in that the cross-border ownership structure of the acquiring domestic company within the European Union, which determines the situation in the main proceedings, constituted a foreign element relevant to the answer to the first question referred for a preliminary ruling.³⁹

Under Article 49 TFEU, “*any restriction on the freedom of establishment of nationals of a Member State in the territory of another Member State shall be prohibited.*” According to the relevant case-law of the CJEU, any measure of a Member State which prohibits, hinders or renders less attractive the exercise of the freedom of establishment is considered a restriction.⁴⁰

³⁴ Case C-106/22. paras 23-24.

³⁵ Regulation (EU) 2019/452 of the European Parliament and of the Council establishing a framework for the screening of foreign direct investments into the Union, [2019] OJ 2019. L 79., For revisions to the regulation, see: Riela, S., *The EU's foreign direct investment screening mechanism two years after implementation*, European View, Vol. 22, Issue 1, 2023.

³⁶ Case C-106/22. para 32.

³⁷ See for example Case C-563/17 *Associação Peço a Palavra és társai kontra Conselho de Ministros* [2019] ECLI:EU:C:2019:144; Case C-251/98 *C. Baars v Inspecteur der Belastingen Particulieren/Onderne-
mingen Gorinchem* [2000] ECLI:EU:C:2000:205; Case C-686/13. *X AB v Skatteverket* [2015] ECLI:EU:C:2015:375.

³⁸ Case C-106/22. para 42.

³⁹ Case C-106/22. para 56.

⁴⁰ Case C-563/17. para 54.

Taking into account that the Hungarian legislation at issue in the main proceedings constituted a “particularly serious restriction”⁴¹ on the freedom of establishment, the CJEU examined whether the conditions⁴² for a restriction existed. In doing so, the CJEU established, with a fundamental importance, that, on the one hand, purely economic reasons linked to the promotion or proper functioning of the national economy cannot justify a restriction on one of the fundamental freedoms guaranteed by the Treaties, and, on the other hand, public policy and public security may be invoked only in the event of a genuine and sufficiently serious threat affecting one of the fundamental interests of society.⁴³ In light of these considerations, it could not be established during the procedure that the local provision of certain basic construction raw materials would fall within the scope of “a fundamental social interest”, nor that the specific acquisition would create a real and sufficiently serious threat affecting a fundamental social interest.⁴⁴

Although the basis of the judgment in the analyzed case C-106/22 is not related to food enterprises, its general principles established by the Court findings are relevant for enterprises of any profile that are classified as strategic under the law, thus by analogy also for the regulatory procedure conducted for the acquisition of Alföld Tej Kft., referred to at the beginning of the chapter.

5. RESTRICTION ON THE EXPORT OF AGRICULTURAL PRODUCTS OF STRATEGIC IMPORTANCE

The third Hungarian regulation analyzed in this study, which restricts EU law by reference to national security of supply,⁴⁵ provided for the notification procedure and related measures related to the export of agricultural products of strategic importance. The relevant Government Decree 83/2022. (III. 5.) was adopted on the basis of the statutory authorization for the protection against the coronavirus pandemic. The following products fell within the scope of the decree: wheat, rye, bar-

⁴¹ Case C-106/22. para 59.

⁴² The national measure concerned meets an overriding reason based on public interest, is suitable for securing the attainment of the objective which it pursues and does not go beyond what is necessary to attain it - Case C-555/19. *Fussl Modestraße Mayr GmbH v SevenOne Media GmbH* [2021] ECLI:EU:C:2021:89.

⁴³ Case C-106/22. paras 64. and p. 67.

⁴⁴ Case C-106/22. paras 69. and p. 71.

⁴⁵ In this regard, it is worth referring to the study by Aleksandra Kowalska, Anna Budzyńska and Tomasz Białowas, which found in an international context that supply security was not caused by food shortages, but by rising food prices, which were exacerbated by export restrictions. See Kowalska, A., Budzyńska, A., Białowas, T., *Food export restrictions during the COVID-19 pandemic: Real and potential effects on food security*, International Journal of Management and Economics, Vol. 58, No. 4, 2022, p. 420.

ley, oats, corn, soybeans, sunflower seeds. During the export of these products from the territory of Hungary abroad, the state had a pre-emptive or purchase right, which right could be exercised based on a written notification by the person selling or intending to export the product abroad.⁴⁶ The decision was made by the Hungarian National Asset Management Company based on the position of the Minister of Agriculture. In giving his position, the Minister of Agriculture examined whether “*the sale or export of the grain concerned abroad significantly hinders or makes impossible the supply of raw materials necessary for the feed supply of domestic livestock farms, whether it endangers public supply, or whether it poses a risk to food security.*”⁴⁷

A country can restrict exports in several ways, typical instruments being export quotas and export bans.⁴⁸ The Hungarian regulation under examination can be considered milder than these, as it “only” provides a pre-emptive right for the benefit of the state, but given the restriction itself, it must be compatible with EU law.⁴⁹ Although no CJEU ruling has been issued regarding this specific legislation, it is worth analyzing the judgment of the CJEU in Case C-499/23⁵⁰, which was based on infringement proceedings initiated due to Government Decree 402/2021. (VII. 8.), which was a regulation on the registration procedure and other measures related to the export of raw materials and products of strategic importance for the security of supply in the construction industry to be adopted in order to restart the economy. The regulation also imposed a notification obligation in the case of the export of certain construction materials, based on which the Hungarian state could exercise pre-emptive and purchase rights based on the proposal of the government commissioner if the sale or export of the construction material abroad significantly hinders or renders impossible the establishment, operation, maintenance and development of critical infrastructures, thereby endangering public supply or posing a risk to the security of supply in the construction industry. Considering its regulatory logic and reasons, it can be seen that the regulation examined by the CJEU is practically analogous to the legislation on the restriction of grain exports.⁵¹

In its judgment in Case C-499/23, the CJEU focused on the prohibition laid down in Article 35 TFEU, which provides that “*all quantitative restrictions on*

⁴⁶ Government Decree No. 83/2022. (III. 5.) Sections 1-2.

⁴⁷ Government Decree No. 83/2022 (III. 5.), Section 3 (2).

⁴⁸ Ghorl, U. H., *Export Restrictions and Export Controls - From WTO to the Realm of Global Security*, Edward Elgar Publishing, Cheltenham–Northampton, 2023, p. 9. [<https://doi.org/10.4337/9781800889828>].

⁴⁹ Mazur-Kumrić, N., Zeko-Pivač, I., *Triggering emergency procedures / A critical overview of the eu's and un's response to the covid-19 pandemic and beyond*, ECLIC, Vol. 5, 2021, Special Issue: EU 2021 – The Future of the EU in and after the Pandemic, p. 107.

⁵⁰ Case C-499/23. *European Commission v Hungary* [2021] HL C, C/2026/133

⁵¹ It should be noted that both pieces of legislation have since been repealed.

exports and measures having equivalent effect shall be prohibited between Member States.” In this regard, it referred, inter alia, to the case-law laid down in the Groenveld judgment,⁵² according to which measures having equivalent effect to quantitative restrictions on exports are national measures which have the object or effect of specifically restricting exports and, as a result, create a difference in treatment between the internal trade of a Member State and its exports in such a way as to favour domestic production or the internal market of the State concerned at the expense of trade or production in other Member States.⁵³ It was also reiterated that Articles 34-35 TFEU Articles 1 and 2 of the Treaty on the Functioning of the European Union preclude the application of national legislation in relations within the Union which, even as a mere formality, maintains the requirement to obtain import or export permits or any similar procedure.⁵⁴

The CJEU found that Government Decree 402/2021. (VII. 8.) clearly aims to restrict trade in construction materials by creating a difference in treatment between internal trade and export trade in those products and by granting an advantage to the internal market of that Member State.⁵⁵ The CJEU held that the effects of the legislation could not be qualified as too incidental or indirect, given the administrative burdens imposed, the extension of delivery times and the penalties envisaged.

In relation to the conditions for justifying restrictive measures regulated in Article 36 TFEU,⁵⁶⁵⁷ the CJEU referred to paragraph 36 of the judgment in *Campus Oil*

⁵² Case 15/79. *P.B. Groenveld BV v Produktschap voor Vee en Vlees* [1979] ECLI:EU:C:1979:253.

⁵³ Case 15/79. paras 6-7.

⁵⁴ Case C-499/23. para 57. p, cited judgment: Case 51 to 54-71, *International Fruit Company NV v Produktschap voor groenten en fruit* [1972] ECLI:EU:C:1971:128, para 9.

⁵⁵ Case C-499/23. para 61.

⁵⁶ Article 36 TFEU

„ The provisions of Articles 34 and 35 shall not preclude prohibitions or restrictions on imports, exports or goods in transit justified on grounds of public morality, public policy or public security, the protection of health and life of humans, animals or plants, the protection of national treasures possessing artistic, historic or archaeological value, or the protection of industrial and commercial property. Such prohibitions and restrictions shall not, however, constitute a means of arbitrary discrimination or a disguised restriction on trade between Member States.”

⁵⁷ In this regard, the main findings of the case law cited by the CJEU:

- A national measure contrary to Article 35 TFEU may be justified by one of the reasons of public interest referred to in Article 36 TFEU or by an overriding requirement of public interest, provided that it is suitable for achieving the objective pursued and does not go beyond what is necessary in order to achieve that objective. (see for example: Case C-648/18. *Autoritatea națională de reglementare în domeniul energiei (ANRE) v Societatea de Producere a Energiei Electrice în Hidrocentrale Hidroelectrica SA.* [2020] ECLI:EU:C:2020:723, para 34.);
- national legislation is only suitable for achieving the said objective if it actually seeks to achieve it in a coherent and systematic manner (see for example Case C-98/14, *Berlington Hungary Tanácsadó és Szolgáltató Kft and Others v Hungary* [2015] ECLI:EU:C:2015:386, para 64.).

and Others,⁵⁸ in which it was stated that for the application of Article 36 TFEU it is important that this measure is actually justified by objective circumstances corresponding to the needs of public security. Referring to the case analysed in the previous chapter, the CJEU also found in this case that public security can only be invoked in the event of a genuine and sufficiently serious threat affecting a fundamental interest of society.⁵⁹ Overall, it was also found here that Hungary has not demonstrated that Government Decree 402/2021. actually and strictly corresponds to the needs of public security in terms of objective circumstances.⁶⁰ It was highlighted that the regulation generally identifies Hungarian infrastructures as objects of protection, without establishing that each of them actually has an essential social interest, since the regulation under review contains neither a list of infrastructures serving such an interest nor a definition of the concept of “critical infrastructure” – either directly or by reference to another legal act – which would allow for a clear and exhaustive identification of the infrastructures concerned.⁶¹ Finally, the CJEU reiterated that purely economic reasons linked to the promotion of the national economy or its proper functioning cannot justify a restriction on one of the fundamental freedoms guaranteed by the Treaties.⁶²

The issue of compatibility with Regulation (EU) 2015/479⁶³ on common rules for exports also arose in the proceedings, given that, in the Commission’s view, the restrictions contained in Government Decree 402/2021 also applied to exports to third countries, thus qualifying as a measure falling within the scope of the common commercial policy, and thus Hungary infringed Article 3(1)(e) TFEU, according to which the Union has exclusive competence in the field of the common commercial policy. According to Hungary, the regulation under review was adopted on the basis of the authorisation provided for in Article 10 of Regulation (EU) 2015/479, which states that “*without prejudice to other Union provisions, this Regulation shall not preclude a Member State from introducing or applying quantitative restrictions on the export of certain products on grounds of public morality, public interest or public security; the protection of health and life of humans, animals and plants; the protection of national treasures possessing artistic, historic or archaeological value, or the protection of industrial and commercial property.*”

⁵⁸ Case 72/83, *Campus Oil Limited v ministre pour l’Industrie et l’Energie* [1984] ECLI:EU:C:1984:256

⁵⁹ Case C-499/23. para 72.

⁶⁰ Case C-499/23. para 76.

⁶¹ Case C-499/23. para 77.

⁶² Case C-499/23. para 84.

⁶³ Regulation (EU) 2015/479 of the European Parliament and of the Council on common rules for exports, [2015] OJ L 83.

The CJEU found in its judgment that the concept of “public security” as set out in Article 10 of Regulation (EU) 2015/479 and Article 36 of the TFEU have the same content, so Hungary’s claim that the security of supply of construction materials for critical infrastructures is at risk is unfounded even in this legal context.⁶⁴

Similarly to the previous chapter, given the identical regulatory system of the legislation that forms the basis of the analyzed CJEU judgment, the fundamental findings of the judgment can also be considered as guiding with regard to the legal framework regarding the restriction of food exports.

6. SUMMARY

In recent years, efforts by member states to adopt measures that are contrary to the fundamental regulatory structures of the European Union, citing their own security of supply and justifying them with a global crisis, have intensified. What was previously the basis for integration between member states has now become a reference against it. This phenomenon can be observed widely in Hungary, the basis of which is the state of emergency legal order that has existed practically continuously for many years. This legal order creates the opportunity for the government to enact legislation by decree, either instead of laws or by amending them. This practically unlimited authorization has led to the government in several cases adopting legislation in order to achieve economic policy goals, in which case the originally indicated security of supply legal basis may be questionable. This questionability not only limits certain EU legal “freedoms”, but also calls into question the legitimacy of the restriction. The CJEU judgments analysed in the study clearly show that the existence of a crisis situation and the reference to it do not in themselves make Member State measures restricting EU law legitimate. In all cases, it is necessary that the measures serve to avert a real and demonstrable threat, that the restrictions are suitable for achieving the objective pursued and that they do not go beyond what is necessary to achieve the objective pursued, in accordance with consistent case-law.

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⁶⁴ Case C-499/23. paras 107-108.

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