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Judgment of the Court in Case C-106/22 | Xella Magyarország

The objective of ensuring the supply of gravel, sand and clay to the construction sector at the regional level cannot justify a restriction on the freedom of establishment

That objective does not concern a fundamental interest of society capable of justifying such a restriction on grounds of public policy or public security

The Hungarian company Xella Magyarország, which manufactures concrete construction materials, is challenging before a Hungarian court the decision of the Hungarian Minister for Innovation and Technology prohibiting it from acquiring the Hungarian company Janes és Társa, which operates a gravel, sand and clay quarry.

Xella Magyarország is owned by a German company, which is owned by a Luxembourg company, which is, in turn, owned indirectly by a parent company established in Bermuda, which ultimately belongs to an Irish national.

The Minister considered that the company Janes és Társa must be regarded as a 'strategic company' within the meaning of the Hungarian legislation establishing a foreign investment filtering mechanism. According to the Minister, if Janes és Társa were to be indirectly owned by a company registered in a third country, namely in Bermuda, this would pose a longer term risk to the security of supply of raw materials, such as gravel, sand and clay, to the construction sector, particularly in the region where Janes és Társa is established.

By its first question, the Hungarian court asked the Court of Justice whether the foreign investment filtering mechanism in question, as applied in the present case, is compatible with EU law.

More specifically, it is a **foreign investment filtering mechanism which allows the prohibition of the acquisition of a resident company regarded as strategic**

- by another resident company which is part of a group of companies established in several Member States, over which an undertaking from a third country exercises majority control,
- on the ground that that acquisition harms or risks harming the national interest in ensuring the security of supply to the construction sector, in particular at the local level, with respect to basic raw materials, such as gravel, sand and clay.

By today's judgment, the Court answers that the question must be examined **solely in the light of the freedom of establishment** enjoyed by EU companies referred to in Article 54 TFEU, and that that fundamental freedom precludes such a **foreign investment filtering mechanism**.

The Court notes, first of all, that the acquisition in question does not fall within the scope of Regulation (EU) 2019/452.¹ That regulation applies only to investments in the European Union by companies from third countries.

¹ Regulation (EU) 2019/452 of the European Parliament and of the Council of 19 March 2019 establishing a framework for the screening of foreign

The fact that, as in the present case, an undertaking registered in a third country exercises majority control over the investor residing in the European Union therefore does not mean that that regulation is applicable.

Next, the Court observes that the first question, since it must be examined solely in the light of freedom of establishment, is admissible even though, in the present case, both the acquiring company, Xella Magyarország, and the acquired company, Janes és Társa, are Hungarian companies. The cross-border ownership structure of the acquiring company, namely the fact that its parent company is a German company and its 'grandparent' company is a Luxembourg company, constitutes a relevant foreign element for the purposes of the answer to be given to the first question, having regard also to the applicable national legislation.

According to the Court, **the filtering mechanism, as applied in the present case, clearly constitutes a restriction on the freedom of establishment**, which is, moreover, a **particularly serious** restriction.

That restriction cannot be justified by the objective of ensuring the security of supply to the construction sector, in particular at the local level, **as regards** certain basic raw materials, namely **gravel, sand and clay**. **That objective does not concern a 'fundamental interest of society'**, within the meaning of the Court's settled case-law, as is the case with the security of supply to the petroleum, telecommunications and energy sectors. Furthermore, according to the Court, it cannot be considered that, in the circumstances of the present case, the acquisition prohibited by the national decision at issue is actually capable of giving rise to a 'genuine and sufficiently serious threat', within the meaning of the equally settled case-law of the Court.

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 European Union law or the validity of a European Union 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 the abstract](#) of the judgment are published on the CURIA website on the day of delivery.

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