



## PRESS RELEASE No 25/25

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Advocate General's Opinion in Case C-271/23 | Commission v Hungary (Reclassification of cannabis)

### **Advocate General Medina: by voting against the Council's Decision establishing the position of the European Union on the reclassification of cannabis and cannabis-related substances, Hungary infringed EU law**

During a session of the United Nations Commission on Narcotic Drugs, <sup>1</sup> when voting on an amendment of the Convention on Narcotic Drugs (Convention), <sup>2</sup> Hungary voted and made a declaration against the Council's Decision <sup>3</sup> that established the position to be taken on behalf of the European Union with respect to the reclassification of cannabis and cannabis-related substances. <sup>4</sup>

Claiming that Hungary failed to fulfil its obligations under the Council's Decision and violated the exclusive external competence of the Union and the principle of sincere cooperation, the Commission brought an infringement action before the Court of Justice.

**Advocate General Medina finds** that the action is admissible, as the Court should address potential impacts on European Union's unity in external action, regardless of the fact that the conduct took place in the past and is irreversible.

On the merits, Advocate General Medina takes the view that a Member State **cannot plead the illegality of a Council's Decision as a defence against an action for failure to fulfil obligations**, without having previously challenged the legality of that decision before the Court.

The binding nature of the Council's Decision and the obligations of the Member States resulting therefrom are not affected by the fact that Hungary voted against that decision. The Member State, as an addressee of the Council's Decision and a member of the Commission on Narcotic Drugs with voting rights, was required to comply with and implement that decision. Failure to comply with the Council's Decision may **call into question the unity and consistency of the EU's external action and undermine the value of the rule of law** enshrined in Article 2 TEU. By deliberately disregarding it, **Hungary failed to fulfil its obligations under the Council's Decision**.

Following the Court's case-law, since decisions on the modification of substances in the schedules of the Convention affect and alter EU law, particularly Council Framework Decision, <sup>5</sup> the position to be taken by the EU Member States in relation to those decisions falls within the exclusive competence of the Union. <sup>6</sup> By voting against the Council's Decision, **Hungary failed to fulfil its obligations under the Union's exclusive external competence**.

Finally, through its vote, its public rejection of the European Union's position, and its failure to inform the EU's institutions and other Member States, Hungary jeopardised the coherence and consistency of the Union's external action, thus **violating its obligations arising from the principle of sincere cooperation**. <sup>7</sup>

Consequently, **Advocate General Medina proposes that the Court should declare that Hungary failed to fulfil its obligations under the Council's Decision, and also infringed the exclusive external competence of the Union and the principle of sincere cooperation**.

**NOTE:** The Advocate General's Opinion is not binding on the Court of Justice. It is the role of the Advocates General to propose to the Court, in complete independence, a legal solution to the cases for which they are responsible. The Judges of the Court are now beginning their deliberations in this case. Judgment will be given at a later date.

**NOTE:** An action for failure to fulfil obligations directed against a Member State which has failed to comply with its obligations under European Union law may be brought by the Commission or by another Member State. If the Court of Justice finds that there has been a failure to fulfil obligations, the Member State concerned must comply with the Court's judgment without delay. Where the Commission considers that the Member State has not complied with the judgment, it may bring a further action seeking financial penalties. However, if measures transposing a directive have not been notified to the Commission, the Court of Justice can, on a proposal from the Commission, impose penalties at the stage of the initial judgment.

Unofficial document for media use, not binding on the Court of Justice.

The [full text](#) of the Opinion is published on the CURIA website on the day of delivery.

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<sup>1</sup> The Commission on Narcotic Drugs is one of the functional commissions of the United Nations Economic and Social Council ('ECOSOC').

<sup>2</sup> The 1961 Single Convention on Narcotic Drugs, as amended by the 1972 Protocol amending the Single Convention on Narcotic Drugs of 1961, concluded in New York on 30 March 1961 (United Nations Treaty Series, Vol. 520, No 7515).

<sup>3</sup> [Council Decision \(EU\) 2021/3](#) of 23 November 2020 on the position to be taken, on behalf of the European Union, at the reconvened sixty-third session of the Commission on Narcotic Drugs, on the scheduling of cannabis and cannabis-related substances under the Single Convention on Narcotic Drugs of 1961, as amended by the 1972 Protocol, and the Convention on Psychotropic Substances of 1971.

<sup>4</sup> All EU Member States are parties to the Convention on Narcotic Drugs and the Convention on Psychotropic Substances, whereas the Union is not, as only States, and not international or regional organisations, can be parties to the convention.

<sup>5</sup> [Council Framework Decision 2004/757/JHA](#) of 25 October 2004 laying down minimum provisions on the constituent elements of criminal acts and penalties in the field of illicit drug trafficking.

<sup>6</sup> [Article 3\(2\) TFEU](#)

<sup>7</sup> The principle of sincere cooperation is enshrined in [Article 4\(3\) TEU](#).