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THE NATIONAL INTEREST IN EU LAW AND GOVERNANCE: THE HUNGARIAN PERSPECTIVE 2

FINDINGS OF THE

MUTUAL LEARNING EXPERIMENTS (MLES)

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Introduction

The MLEs were conducted with two purposes in mind. Firstly, we aimed to collect insights from officials working in the Hungarian and the European Union administrations at the expert level concerning how they understand the national interest in the policy development and decision-making processes in which they participate. Secondly, we wanted to share with them different interpretations and perspectives of formulating and representing the national interest/ position in the EU political and legal context, as presented in academic work. The MLEs were not conducted as formal research interviews and their results are not used directly in our research. This is an overview of what we –as academic researchers – learned from the events. Therefore, the following account is not an exact report of the discussions.

Summary of findings

- EU membership has transformed interest formation and interest representation in Hungary;
- while it has reduced the opportunities for autonomous unilateral interest representation, it has offered a solid political and legal framework for the promotion of national interests;
- on balance, this consequence of EU membership may be to the benefit of a country with a relatively small size and influence, such as Hungary;
- the national interest attracts a predominantly instrumental, operationalised interpretation, which focuses on producing a national position/response to the specific issues raised in EU decision-making and enforcement;
- the expert formulation and representation of national interest needs to be separated from the political formulation and representation of interests;
- the instrumental, operationalised understanding of the national interest implies that the majority of national interests represented under the EU framework are not absolute in their content and status, and that national preferences can change according to the circumstances of the individual decision-making situation;
- there are, however, particular interests which may be pursued without accepting a compromise;
- at expert level, the national interest may not manifest in its full complexities and with its internal contradictions, and the formal institutional-procedural arrangements may not enable understanding and expressing the broader implications of the interests represented;
- this does not mean that the complexities or the contradictions of policies and the necessity for negotiations and bargaining would not be recognised, and that representing the national position/response in the complex political, legal and policy environment of the EU would not require superior organisational and personal skills;
- while mastering formal avenues of interest representation in the EU has clear significance, the importance of informal instruments in influencing EU decision making must not be underestimated;
- it is not excluded that the EU institutional framework – mainly outside the regular decision-making procedures – may have limited capacity for the integration of national interest considerations and for assessing the implications of its outputs for Member State interests;
- in the collective EU framework the ability to negotiate, bargain or to enter into compromises and package deals on good terms serves better the interests of individual Member States, than unbending representation of national positions except when the political and legal circumstances make such representations of the national interest possible;

- the collective nature of the EU framework entails dilemmas, games and difficult choices for the Member States representing their particular interests in opposition to their interests shared with the other Member States, which could render the national interest being subject to considerations of strategy and political/policy calculations.

1. The national interest in the context of the Common Commercial Policy

The MLE focused on formulating and representing national interest within the framework of the EU Common Commercial Policy. It found that with EU accession the focus and the possibilities of national commercial policy have changed fundamentally. Hungary lost most of its autonomy concerning external trade with third countries, and its aim now is to promote Hungarian external trade interests within the procedural and substantive framework of the Common Commercial Policy. Because of the Treaty regulation of Common Commercial Policy, Hungary is now unable to initiate or conclude international trade agreements on its own, to offer mutual benefits to its trade partners (as it has an impact on trade and competition in the Single Market), it was required to abandon many of its existing agreement-based obligations, it was required to implement the EU external acquis completely, and it is expected to adhere to the Union's position (interest) in ongoing trade negotiations and trade disputes. Hungary remained a member of the WTO, its obligations bind Hungary, but it is represented in WTO matters by the European Commission.

In terms of representing national interests within the Common Commercial Policy, it must be recognised that the Commission is unlikely to promote the particular trade interests of a Member State with the size and influence of Hungary. The Commission and the Common Commercial Policy will more likely pursue genuine Union interests (i.e., the interests of the Single Market), the interests of strong and influential Member States, the institutional interests of the Commission, and, potentially, the broader personal interests of Commission officials participating in trade negotiations and disputes. For smaller Member States to succeed, their interests must be packaged as the interests of the Union and must be negotiated within the EU having regard to the interests of the other Member States within the Union. This requires a flexible and expert positioning of national interests in an extremely complex transnational environment.

There is a high importance placed on informal contacts and informal negotiations preceding European Commission decisions. Commission officials and commissioners are likely to be engaged in an intensive exchange of information with the officials of their 'home' Member States. There are intensive expert level negotiations before Commission meetings aiming to find out the position of the Commissioner 'representing' an individual Member State. Preliminary informal investigations and information gathering can lead to Member State experts representing very clearly determined positions, which could reflect the position of the Commission, or the interests of affected national economic operators, and not the 'national interests'. This could be important as at expert level the weight of the Member State represented by the expert can determine negotiations, and experts from small Member States need to be prepared adequately to be able to make an impact on the compromise being hammered out by the Member

States. It is easy to be left alone with an otherwise sound position, when it is impossible to represent that position against the more influential Member States representing national or other nationally relevant interests.

The current position of Hungarian external trade interests within the EU framework is not better or worse than its previous position, but different. While its autonomy in external trade matters was nearly reduced to the minimum by EU membership, as part of a group of influential global trading partners, its interests – if they match those of the others – cannot simply be ignored in the same way as before 2004. Currently, Hungary as part of a collective external trade policy regime – subject to the restraints of collaboration – is able to represent its interests better at the global level. Exploiting these possibilities in the interest of Hungary requires learning how to control the EU decision-making process and understanding how its interest can be formulated and represented in order to avoid being left alone in EU Common Commercial Policy negotiations. However, concerning mixed agreements, Member States have real bargaining power as they are able to threaten the Commission and the Council with the rejection of ratification.

The preferences of Hungary within the Common Commercial Policy framework necessarily depend on the trade partner involved. Depending on the trade partner's impact on Hungarian imports and exports, Hungary may follow a permissive or a defensive trade policy approach. In this regard, the impact of the Common Customs Tariff must also be considered. In case the Common Customs Tariff is favourable towards the trade partner dependent trade policy approach of Hungary, the Common Customs Tariff will be defended. In the opposite case, Hungary will challenge the common European rules. Formulating the national position in this manner will necessarily create tensions between domestic stakeholders. While trade policy preferences determined according to this logic could favour the interests of economic operators, it may harm the interests of domestic consumers, and vice versa.

The robustness of the national position formulated under the Common Commercial Policy framework largely depends on the area of international trade affected. The trade in goods has traditionally been considered as particularly important for all EU Member States. For Hungary, the trade in services or the protection of intellectual property rights have lesser relevance. In contrast, the protection of designation/origin has led to Hungary vehemently representing particularly clearly defined national trade interests. These include the protection of Hungarian products in the recent EU-Canada and EU-Australia trade negotiations.

The MLE also discussed the different national positions regarding the recently introduced economic sanctions against Russia. It provided a very clear example of the Member States negotiating as far as possible sanctions that will have the most reduced impact possible on their trade interests with Russia. This depends on the level of exports to Russia or on the dependence of the Member State concerned on the import of Russian

technology or on Russian investment. While the principle of loyalty should prevent the Member States from seeking to negotiate with Russia outside the EU framework, within which they are expected to negotiate their preferences, many Member States have decided to negotiate with Russia directly parallel with the intra-EU negotiations as Russia is not bound by a principle of loyalty to the EU. The dilemma is how far the Member States can go in pursuing their own interest without damaging their collective interests within the EU framework. It is also necessary for them to assess not only their EU but also their other international obligations, for instance, under the WTO framework.

The case studies discussed during the MLE shed light on the complex strategies needed to negotiate a position favourable to the interests of Hungary in the decision-making process of the Common Commercial Policy. The first step is to determine the national position with respect to the proposal submitted by the Commission in light of the interests of producers and traders in the Member States, and of the broader and narrower interests of the national economy. Next, partners for a successful coalition need to be found from among the Member States, for which the interests and the potential positions of other Member States need to be thoroughly vetted. Separating the real and perceived interests of other Member States is of high importance as mistakes made in this regard can lead to the breaking up of the coalition or the coalition being ineffective in pursuing its interests. Then, the interests and conflicts between the different Commission DGs need to be screened. It will affect Commission positions whether DGs representing competing policy objectives are unable to agree (trade policy v. industrial policy), or when DGs reach out to Member States and Member State coalitions to find support for their position. Ultimately, the local interest and its weight can be made visible by communication at the highest political level (a letter from the head of government), which could indicate a threat of no agreement or a threat of non-ratification, and which could lead to the Commission and the other Member States to offer a compromise deal (e.g., a technical compromise of allowing trade to a certain customs contingent).

The other avenue for making sure that the national interest is not compromised unduly is the setting and control of the mandate given to the EU Commission to negotiate in the Common Commercial Policy. In this regard, the position of individual Member States is not particularly easy. There are two traditionally formed larger blocks of Member States representing opposite positions as to the direction of common trade policy in the EU. The Nordic states have traditionally favoured market opening and, therefore, are interested in giving the Commission a loose mandate. The Southern Member States follow an interest-driven (and, possibly, protectionist) approach in trade policy, and they are likely to want to restrict the mandate of the Commission by indicating what advantages should be asked from our trading partners for the advantages we offer them in the single market. Communication between the two blocks could be particularly difficult when the interest-driven Member States want the Commission to take a particular position regarding a particular matter (e.g., GMO crops),

and the Member States supporting market opening are unable to develop a substantive policy position in response because they are not interested in introducing particular interests and values into trade policy. In such circumstances, the Member States with a substantive policy position have a positional advantage over other Member States with no clear preferences. Vigilance over the Commission in the course of the negotiations is also necessary. The Commission reports and drafts emerging from the negotiation process require close scrutiny in order to determine whether the Commission has been following its mandate or whether it has made mistakes. This could be particularly problematic when the third country insists on the non-disclosure of documents to the Member States or to the European Parliament.

The difficulty of determining the Hungarian national interest in matters of international trade depends largely on the subject area. Determining domestic interests in the domain of trade in goods is less complicated than in the area of trade in services or of foreign investment. Concretising national interests in trade in goods requires examining trade statistics (if they are available), customs levels, export projections and calculations on the desirable level of export and import customs rates. This is carried out in parallel with negotiations with other interested ministries, external trade diplomats, interest groups economic operators and with the foreign trade agencies of the Hungarian government. From this, determining the trade interests of Hungarian economic operators could be the most problematic as they often lack adequate foreign trade strategies or definable trade expectations (e.g., during the WTO-Russia accession negotiations, when the WTO was in an extremely advantageous position over Russia, most Hungarian economic operators were unable to indicate their positions to the Foreign Ministry). In the Hungarian context, it is also relevant that economic operators exporting from Hungary are multinationals that have access to more powerful governments in the global and regional setting to pursue their interest. They, nevertheless, inform the Hungarian government that they have approached other governments to promote their export interests. Diffuse interests may have an adverse effect on maintaining successful trading positions, however, a set of core economic interests associated with moral or representative values, such as the protection of Hungarian speciality products or the upholding of national standards regarding the prohibition of GMOs, have been successfully pursued both as a salient part of the national agenda and as a coalition-building factor or an asset used in trade-offs at the EU level.

The MLE also discussed whether the formulation of the national interest within the Common Commercial Policy framework involves economic as well as value driven interests. It was raised that the national position is formulated in a process of negotiating between different expert positions reflecting different departmental priorities within government. This means that the interest of foreign trade is but one of the interests considered in the process, and the national position presented before the Council could represent a mixture of national interests of very different origin. The same applies in the case of the national scrutiny of the Commission's negotiation mandate. It is

not excluded that the national arrangements for the formulation of national positions could introduce not only trade but also other diffuse interests into the mandate. Arguably, the negotiations between the different DGs of the Commission could also enable including non-economic, value driven considerations in the mandate given to the Commission. This possibility is necessarily affected by the new arrangements of the Juncker Commission in which not all Commissioners will have access to negotiations affecting the portfolios of other Commissioners. It will be interesting to see how the different thematic groups of Commissioners (e.g., Competitiveness Team, or External Action Team) will cooperate or try to influence each other. It is fairly sure that the ability of individual Commissioners to influence individual issues following the interests of a particular Member State will be considerably reduced in this new system.

2. The national interest in the coordination of EU affairs at the national level

The MLE revealed a predominantly technical and operational understanding of the national interest in the national coordination of EU affairs. The focus is on the legal and/or policy dossier prepared at expert level in the line ministries. The dossier is shaped by the concrete issue coming from the EU level (e.g., a Commission document, agenda in Council meeting), the political position which then needs to be transformed into an expert position, the expert position taken by the line ministry, and by the outcome of the expert and political negotiations in government. The dossier representing the national position in a particular EU policy issue has two particularities. Firstly, in its preparation it can rely on information collected by the permanent representation and the Ministry of Foreign Affairs from Commission departments, the Council, or from other Member States. This provides the basis of the 'initial mandate' prepared by the line ministry for the government, a mandate which represents a first formulation of the national position/interest. Secondly, it represents a negotiated manifestation of the national interest as it is formulated in inter-departmental negotiations among the ministries, where conflicts in general or in special questions will be resolved in expert-level negotiations, and ultimately in political negotiations.

The technical and operational understanding of the national interest places emphasis on the regular and precise functioning of the relevant processes at the national level. The procedural framework operates under downward pressures from the Union level, and it is geared towards responding to those pressures in a timely and effective manner. Although delays in the national process do not exclude completely the representation of national interests at the EU level, it interrupts the management of the workload and affects the effectiveness of inter-state negotiations. Such delay may follow from priority conflicts within government, the deficiency of resources, or from political obstructionism at national and European level. Nevertheless, there are benefits to be gained through delaying the communication of the national position. It may be necessary to wait for the evolution of negotiations at the European level and to formulate the national position on the basis of developments in European negotiations. This can enable making a better considered decision regarding which national positions are negotiable and which should be pursued fully. In this regard, it can be relevant whether the Member State concerned follows a compromise seeking attitude in European negotiations and whether the Member State is able to assess which national positions will eventually be defeated. It may be more beneficial to develop national positions which will lead to good compromises from the perspective of the Member State concerned, or to formulate dynamic national positions which can be modified when necessitated by the progress of EU decision-making.

The necessity to develop a flexible and negotiable national position for EU level negotiations raises an interesting dilemma concerning the choice between interests that

can be operationalised effectively and substantively defendable national interests. It is not excluded that the national position represents a substantive national interest and that the mandate allows no negotiation on the national position. However, the interest of flexible, effectively represented and timely prepared national positions may require formulating interests that are easier to operationalise and which are open to negotiation. This could mean drafting a dynamic mandate or a framework mandate with policy and political benchmarks for negotiation. The institutional framework of inter-state negotiations may favour the latter approach. The choice can be influenced by the resources available to government, the weight of the interest in Europe and at national level, the method of enforcement selected for the common commitment, and by the financial implications at the national level.

It is not clear that in the formulation of the national position the national and the Union interest would be examined only in a dialectic relationship, or that their synergies will also be taken into account. At expert level, emphasising the overlap of national and Union interests and preparing a compromise between national and Union expectations are feasible. However, in case the position is regarded as politically sensitive or controversial, the national position can be pursued at all costs and the political and legal possibilities at the Union level will be expanded as far as possible. Although there is a procedural framework for the generation and negotiation of national positions for EU negotiations, institutional and procedural arrangements for the taming and control of the political will seem to be missing. Promoting the expert position over political hard play could be beneficial as the reality of EU negotiations suggest that outcomes are reached through compromises, or through package deals, which are often negotiated at COREPER level and it may be more beneficial to have been able to influence the compromise through constructive action than to attempt unsuccessfully to obstruct the compromise in the protection of politically determined interests. Being prepared to negotiate their positions and reach compromise solutions could pay off for the Member States during infringement procedures as well, although infringement procedures conducted under visible political pressure are unlikely to offer these possibilities to the Member State concerned.

3. The national interest in bi- and multi-lateral frameworks for negotiation under the EU framework

The MLE addressed the possibilities for bi- and multi-lateral diplomacy in formulating, representing and promoting national interests within the EU framework. It found that for Hungary the V4 framework has provided significant opportunities to make its interests count more at the EU level. The V4 is operated consciously as a forum for coordinating national positions and as an interest coalition for the promotion of V4 coordinated interests in EU inter-governmental negotiations. The practice of EU decision-making has driven the V4 states to operate the V4 on the basis of issue/dossier based negotiations and cooperation. This organisation method is also followed in bilateral relations within the V4 group. With regard to the latter form of country-to-country negotiations, the EU has proven to supply an efficient issue-by-issue approach to bilateral diplomacy, which has in many cases caused the revival or reinforcement of diplomatic relations.

There are clear examples of V4 negotiations and cooperation helping the successful representation of national interests at EU level. For example, the EU multiannual financing framework was negotiated to the advantage of V4 states on the basis of preparations which had commenced within the V4 state quite a long period before the negotiations actually started.

The V4 is a trademark representing to the outside world a closely coordinated interest coalition within the EU. There is a history of V4+ talks involving other EU Member States and prospective external partners, such as Turkey, Japan, Nordic countries and the Balkans. Its enlargement, which has been on the agenda for some time, could damage this image. Certainly, there is internal opposition to enlargement by the largest V4 country, the influence of which would be threatened by the expansion of the V4 framework.

The V4 is also available to soften conflicts between the Union and one of the V4 countries. The V4 offers an institutional framework and a forum for negotiating such conflicts.

The V4 functions as a significant power configuration with the EU. It is nearly impossible to buy out any one of the members in case a common position has been agreed to on an issue. Substantive positions and negotiation strategies are both coordinated. The latter possibility is of particular relevance when the national position is not accepted as the V4 position; nevertheless, in exchange for support of the national positions of other V4 states the V4 states can agree on a coordinated, mutually beneficial negotiation strategy at the EU level. Its effectiveness rests on V4 countries establishing their own compromises before EU negotiations begin. V4 countries can devise negotiation strategies having regard to benefits already made visible to them through

negotiations among them. In practice, the effectiveness of the V4 depends on the ability of its members to convince Poland – the most influential member state – to pursue a particular interest or a particular course of action. This can be enhanced by a close and friendly bilateral diplomatic relationship with the Polish government. The Polish government may not be concerned directly with the interests of other V4 countries, but it can be convinced – in exchange for support in areas that matter for Poland – to support those interests in EU negotiations.

4. Member State interests before the EU Court of Justice

The MLE focused on the Court of Justice of the European Union as a forum for formulating and representing the national interest. The MLE provided an image of the Court of Justice as driven by a predominantly pragmatic institutional philosophy. It introduced the Court of Justice as focusing on the handling of its substantive workload and interpreting its constitutional mandate under Article 19(1) TEU in a predominantly formal manner. The MLE addressed mainly formal-institutional matters relating to the representation of the national interest before the Court of Justice.

The MLE formulated a procedural and institutional understanding of the national interest before the Court of Justice. It discussed extensively the availability of procedural and institutional choices before the Court of Justice as enabling the different representation of national interests before the Court (i.e., the holding of a hearing, referring the case to the Grand Chamber). These circumstances do matter as the choice between different institutional and procedural arrangements could enable highlighting more convincingly important matters of domestic policy and law, engaging in a broader and better considered discussion of the legal and policy matters raised, and it could give place to intra-court dialogue involving the different chambers. For instance, the involvement of the judge of the appropriate nationality can produce a more robust assessment of the domestic legal problem in question or a clearer understanding of the social, economic, cultural etc. context in the given Member States. Also, allowing a broad consultation by all possible participants of the relevant legal and policy issues could provide a clearer picture of what should be addressed by the Court of Justice and what should be left, for instance, to the Member States to deal with. The relevant choices are not straightforward, and it is often difficult for a judge to foresee the consequences of the judgment of the Court of Justice in the national legal, social and political framework. A more transparent and better considered deliberation of the relevant matters could not only favour but could also jeopardise the successful representation of the national interest before the Court of Justice, when it leads to narrow compromises or controversial decisions on principles.

The MLE highlighted that the Court of Justice was a more difficult terrain for promoting national interests as opposed to, for instance, the EU Commission. It is a close-knit group of legal experts who in many ways have reached the top of their careers. It is difficult to develop informal connections with members of the Court, and it is difficult to buy them out, or to find avenues into the system to exert direct influence on decision-making. The Court of Justice is likely to be aware of political and social pressures, but it is unlikely to respond to them as directly as the political organs of the EU would.

The MLE also discussed whether the Court of Justice has been using consciously the instruments available to it to accommodate different Member State demands and interests. The relevant instruments include the Court of Justice delineating its

competences, refusing to address questions of domestic policy, or to defer the final assessment of legal and policy matters to the national courts aware of the domestic legal and policy environment. It was raised in this regard that these actions by the Court of Justice could attract a purely formal explanation (e.g., the Court of Justice not being a fact finding court, the separation of functions between national courts and the Court of Justice in preliminary ruling procedures, the piece of EU legislation in question follows the principle of subsidiarity and demands a local solution). It was debated whether the case law provides clear evidence that the Court of Justice is actively observing Member State expectations and whether its judgments indicate clear awareness of national legal, policy and other considerations. It was also discussed whether the Court of Justice is aware of the heightened local anticipation of its rulings (e.g., in cases where the lawfulness of domestic provisions affects the rights and obligations of a higher number of individuals), and whether it anticipates the process and substantive outcomes of the domestic reception of its rulings. It was heavily debated whether the Court of Justice is genuinely aware of the implications of its interference with domestic law and policy, and whether the Member States, the Court itself or other actors should do more to raise awareness of these issues. It was concluded that restricting the temporal effect of Court of Justice judgments may not be able to compensate their negative social, economic and other consequences.

From the perspective of the national interest, the delegation of cases to chambers and reporting judges could be particularly important. The Tuesday general meeting of the Court of Justice often functions as a forum for pursuing national strategies regarding the placement of nationally relevant cases with the right chamber, the right reporting judge and the right advocate general. For instance, because the larger Member States are underrepresented in the Court of Justice in terms of the number of judges, during the general meeting they often make every effort to avoid the selection of 'inappropriate' or 'disadvantageous' persons or chambers. Since the chambers do not communicate with each other and their jurisprudence shows signs of inconsistency with the jurisprudence of other chambers, there may be a genuine case for preferring certain chambers and avoiding others. In respect to grand chamber proceedings, each judge, not forming part of the grand chamber, has the right to participate in the deliberations of the grand chamber and to submit written observations. Cases dealt with by three and five chambers are not known to other members of the Court. Therefore, the Cabinet of the President, which decides on the assignment of cases to chambers, has a primary impact on which judges will hear which cases. Similar considerations are at play in the current proposals for reforming the Court of Justice.

It was also discussed how law and legal principles could be used to promote individual state interests. The introduction of new legal principles, or the consistent interpretation or reinterpretation of existing legal principles could ensure that the integrity of national laws and policies (as a very specific manifestation of the national interest) are safeguarded from unwanted intrusions. The application of legal principles and the interpretation of the law can free Member States from obligations, ensure that

public monies are or are not paid out, or place the Member States in a legally more advantageous position when adjudicating their non-compliance and potential penalties for non-compliance. For instance, raising the applicability of legal safeguards when establishing the penalties for non-compliant Member States under Article 260 TFEU could have enabled the Member State to avoid an especially punitive application of the sanctioning regime of the Treaties. In this regard, it was also argued that the padding of the EU sanctioning regime for non-compliance with legal safeguards could be regarded as contradicting the interests of the Member States. This follows from the fact that the effective enforcement of EU obligations against all Member States – if needed, by imposing the necessary sanctions – under the collective EU framework is in the interest of the Member States. After all, equal compliance by all Member States is necessary for the success of common policies pursuing the shared interests of the Member States, and it also ensures that free riding is not an option for Member States when others comply with their obligations.

The MLE also touched upon the issue of Member States actively pursuing their interest through launching infringement proceedings against other Member States, or through challenging EU action in actions for annulment. These are direct avenues for Member States expressing their disagreement with the policies or conduct of other Member States or of the EU. It was heavily debated whether this represents a break away from the collective arrangements of the EU polity and whether this supports unilateralism within the EU framework. The participants distinguished between the two procedures, and also between instances when Member State conduct focused on delivering a particular legal argument in support of local interests, or was seeking to promote particularist policy considerations under the veil of legal arguments.

It was also discussed whether the pragmatic compromises often reflected in key judgments of the Court of Justice are at all able to serve the interests of any of the parties concerned. It seems that legal solutions which favour one of the parties in one respect and favour other parties in other respects may provide overall negligible benefits (i.e., accepting that instead of a uniform European solution some form of decentralised solutions need to be adopted could favour Member State positions by allowing them greater freedom, but it may also raise the risk of non-compliance and confusion as to the intention of the law at the national level). Furthermore, the Court of Justice needs to be aware of the fact that its interpretation of the relevant EU legislation could affect the various Member States differently owing to their differing economic, social and other circumstances. It needs to be careful to avoid interpreting EU law in a manner that would present unnecessary pressures and dilemmas for undertakings and other individuals at the national level. Because the Court of Justice is required to take into account the different implications of its rulings in the Member States, it may be pressured to deliver rulings reflecting pragmatic compromises between legal and policy positions, criticised for being potentially inadequate just above.