

ECJ Decides on Compatibility of National Legislation with Merger Directive (2009/133): *GE Infrastructure Hungary Holding* (Case C-318/22) (Direct Tax)

16 November 2023

Report from IBFD Knowledge Centre

On 16 November 2023, the Court of Justice of the European Union (ECJ) gave its decision in *GE Infrastructure Hungary Holding Kft. v. Nemzeti Adó- és Vámhivatal Fellebbviteli Igazgatósága* (Case C-318/22) based on a number of grounds.

On those grounds, the Court (Ninth Chamber) hereby rules:

The Court of Justice of the European Union is competent under article 267 of the [Treaty on the Functioning of the European Union](#) to interpret Union law when this law does not directly regulate the situation at hand, but the national legislator, when transposing the provisions of the directive into national law, has decided to treat situations of a purely internal nature in the same way as situations governed by that directive, which it is entitled to do. Article 8(2) of [Council Directive 2009/133/EC](#) of 19 October 2009 on the common system of taxation applicable to mergers, divisions, partial divisions, transfers of assets, and exchanges of shares concerning companies of different Member States and to the transfer of the registered office of an SE or SCE between Member States should be interpreted in such a way that it precludes national provisions conditioning the possibility of using this provision on criteria related to reducing the shareholding of the transferring company in that company or reducing its share capital, which criteria are not provided for in this directive.

(Unofficial translation by IBFD Knowledge Centre)

For a previous TNS regarding the case, see [ECJ Preliminary Ruling Request: GE Infrastructure \(Case C-318/22\) – Fővárosi Törvényszék \(Hungary\) Submits Referral on Compatibility with Merger Directive \(2009/133\) of National Legislation, which Provisions are Held not to Apply to Intra-State Business Conversions \(30 August 2022\)](#).

A more substantial report containing details of the ECJ's decision will be published in the ECJ Case Law collection in due course.

