

# JUDGMENT OF THE COURT

6 June 2020 (1)

(Failure of a Member State to fulfil its obligations - reintroduction of internal border controls  
– Article 34 TFEU - Free movement of goods – Article 45 TFEU – Free movement of  
workers - – Schengen Borders Codex – Justification – Suitability - Necessity)

**In Case C-53/20**

ACTION brought on 14 May 2020,

**Commission of the European Communities**, represented by [REDACTED] and [REDACTED]  
[REDACTED], acting as Agents

**applicant,**

v

**Federal Republic of Germany**, represented by [REDACTED]r and [REDACTED], acting  
as Agents

**defendant,**

The Court (Grand Chamber),

composed of: [REDACTED], [REDACTED], [REDACTED]r, [REDACTED]i, Judges

Advocate Generals: [REDACTED], [REDACTED]er

having regard to the written procedure and further to the hearing on 29 May 2020,

taking into account the statements of:

- The applicant, represented by [REDACTED] and [REDACTED],
- The defendant, represented by [REDACTED] and [REDACTED]

- Denmark, represented by [REDACTED] i,
- European Parliament, represented by [REDACTED] and [REDACTED],
- France, represented by [REDACTED] and [REDACTED],
- Italy, represented by [REDACTED] t and [REDACTED],
- Poland, represented by [REDACTED] and [REDACTED],
- Sweden, represented by [REDACTED] and [REDACTED],
- Spain, represented by [REDACTED] t and [REDACTED],
- Hungary, represented by [REDACTED] r and [REDACTED]

having decided, after hearing the Advocate Generals, to proceed to judgment without an opinion,

gives the following

### **Judgement**

By its application, the Commission of the European Communities asks the Court to make a declaration that

- with the new regulations concerning the reintroduction of internal border controls in the face of the COVID-19 pandemic implemented on March 15, the Federal Republic of Germany has infringed Article 34, 45 and 56 of the Treaty of the Functioning of the European Union (TFEU)
- the new regulatory framework furthermore constitutes a violation of the procedure for the temporary reintroduction of internal border controls as stipulated in Article 25, 27 and 28 of the Schengen Borders Code (Regulation (EU) 2016/399)
- the measures undertaken by the Federal Republic of Germany under their new rules in substance do not meet the principles of proportionality and adequate remedy as outlined by Regulation (EU) 2016/399 and the Commission's Guidelines for border management measures to protect health and ensure the availability of goods and essential services (C(2020) 1753)

## A. Legal background

Article 34 TFEU provides:

‘Quantitative restrictions on imports and all measures having equivalent effect shall be prohibited between Member States.’

Article 36 TFEU provides:

‘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 or restrictions shall not, however, constitute a means of arbitrary discrimination or a disguised restriction on trade between Member States.’

Article 45(1-3) TFEU provides:

‘(1) Freedom of movement for workers shall be secured within the Union.

(2) Such freedom of movement shall entail the abolition of any discrimination based on nationality between workers of the Member States as regards employment, remuneration and other conditions of work and employment.

(3) It shall entail the right, subject to limitations justified on grounds of public policy, public security or public health:

(a) to accept offers of employment actually made;

(b) to move freely within the territory of Member States for this purpose;

(c) to stay in a Member State for the purpose of employment in accordance with the provisions governing the employment of nationals of that State laid down by law, regulation or administrative action;

(d) to remain in the territory of a Member State after having been employed in that State, subject to conditions which shall be embodied in regulations to be drawn up by the Commission.’

Article 52(1) TFEU provides:

‘The provisions of this Chapter and measures taken in pursuance thereof shall not prejudice the applicability of provisions laid down by law, regulation or administrative action providing for special treatment for foreign nationals on grounds of public policy, public security or public health.’

Article 56(1) TFEU provides:

‘Within the framework of the provisions set out below, restrictions on freedom to provide services within the Union shall be prohibited in respect of nationals of Member States who are established in a Member State other than that of the person for whom the services are intended.’

Article 62 TFEU provides:

‘The provisions of Articles 51 to 54 shall apply to the matters covered by this Chapter.’

Article 25 of Regulation (EU) 2016/399 provides:

‘(1) Where, in the area without internal border control, there is a serious threat to public policy or internal security in a Member State, that Member State may exceptionally reintroduce border control at all or specific parts of its internal borders for a limited period of up to 30 days or for the foreseeable duration of the serious threat if its duration exceeds 30 days. The scope and duration of the temporary reintroduction of border control at internal borders shall not exceed what is strictly necessary to respond to the serious threat.

(2) Border control at internal borders shall only be reintroduced as a last resort, and

in accordance with Articles 27, 28 and 29. The criteria referred to, respectively, in Articles 26 and 30 shall be taken into account in each case where a decision on the reintroduction of border control at internal borders is considered pursuant, respectively, to Article 27, 28 or 29.

(3) If the serious threat to public policy or internal security in the Member State concerned persists beyond the period provided for in paragraph 1 of this Article, that Member State may prolong border control at its internal borders, taking account of the criteria referred to in Article 26 and in accordance with Article 27, on the same grounds as those referred to in paragraph 1 of this Article and, taking into account any new elements, for renewable periods of up to 30 days.

(4) The total period during which border control is reintroduced at internal borders, including any prolongation provided for under paragraph 3 of this Article, shall not exceed six months. Where there are exceptional circumstances as referred to in Article 29, that total period may be extended to a maximum length of two years, in accordance with paragraph 1 of that Article.

Article 28(1-3) of Regulation (EU) 2016/399 provides:

‘(1) Where a serious threat to public policy or internal security in a Member State requires immediate action to be taken, the Member State concerned may, on an exceptional basis, immediately reintroduce border control at internal borders, for a limited period of up to ten days.

(2) Where a Member State reintroduces border control at internal borders, it shall at the same time notify the other Member States and the Commission accordingly, and shall supply the information referred to in Article 27(1), including the reasons that justify the use of the procedure set out in this Article. The Commission may consult the other Member States immediately upon receipt of the notification.

(3) If the serious threat to public policy or internal security persists beyond the period provided for in paragraph 1 of this Article, the Member State may decide to prolong the border control at internal borders for renewable periods of up to 20 days. In doing

so, the Member State concerned shall take into account the criteria referred to in Article 26, including an updated assessment of the necessity and the proportionality of the measure, and shall take into account any new elements.’

## **B. The action**

### **I. Admissibility of the action**

Article 120(c) of the Rules of Procedure states that an application by the Commission must spell out clearly and precisely the subject matter of the proceedings, the pleas in law and arguments relied on and a summary of those pleas in law. The defendant must be able to prepare a defense based on this application. The Court may assess whether these criteria are met on its own motion.

In its application the Commission refers to “the new regulations concerning the reintroduction of internal border controls in the face of the COVID-19 pandemic implemented on March 15”. It does not specify which aspects of these regulations violate EU law.

The Commission sufficiently narrowed down the scope of their challenge to German legislation insofar as they provide that “borders are closed for the transportation of goods, except ‘medical and other essential goods’” and that “German nationals are allowed to enter the Federal Republic of Germany, except foreign nationals who want to enter Germany on humanitarian grounds (e.g. attending a funeral or for medical treatment)” in which the commission sees an infringement of EU law, Art. 34, 45 and 56 TFEU respectively. Therefore, the Commissions challenge to German legislation is specific enough.

Apart from that, the first paragraph of the Commissions reasoning refers to a complaint the Commission received by Mathias Klem and indicates that it does not consider his treatment a violation of the Treaties.

Here the Commission does not ask the Court to find a violation of Article 21 TFEU. The *ne ultra petita* principle bars the Court from finding a violation nonetheless.

In contrary to the advocates general statement, the court furthermore cannot treat the arguments that speak in favor or against a violation of Article 21 TFEU as if they related to Article 56 TFEU. Even though the case of Matthias Klem could indicate a violation of the right to receive (touristic) services under Article 56 TFEU, the commission failed to request the declaration of said infringement. The *ne ultra petita* principle and Art. 120(c) of the Rules of Procedure prohibit the court from connecting arguments that were given by the Commission to a plea that the Commission never gave. As would any deviation from the Commission's request heavily interfere with the member states right to defend itself.

Therefore, the Court cannot pose a judgement upon this part of the matter.

## **II. Article 34 TFEU – Complaint no. 2**

On April 25 German authorities denied a truck belonging to Paloma MEDRANOs family-run business entry as the German Federal Police “decided to close the border entirely”. The truck wanted to pass the French-German border in order to sell strawberries and other goods to German grocery stores. The German borders are closed for the transportation of goods with the exception for medical and other essential goods which can still be transported across the German border.

The court finds that the decision of the German authorities to close the borders and force MEDRANOs truck to return to France is violating the right of free movement of goods, Article 34 TFEU. Since a general ban would not constitute a proportionate measure, the Court denies a justification on grounds of public health as stated in Article 36 TFEU.

### **1. Valid Reason**

Germany needs a valid reason to justify the aforementioned restrictions. The free movement of goods can be justified on grounds of one of the reasons listed in Article 36 TFEU, with the protection of health and life of humans being the one in question in this case.

The aim of the measures taken by the Federal Republic of Germany is to slow down or in an ideal situation avoid the further spread of Covid-19 across the border and to protect the healthcare system. The coronavirus pandemic poses significant health risks and therefore serves as justification for restrictions of the free movement of goods. It follows from this that Germany

has shown it has a valid reason to impose its measures namely “public health” as it is called in Article 36 TFEU.

But even if the transportation of goods creates a potential risk for the public health and therefore is justified by Article 36 TFEU, the measures have to be assessed in the framework of proportionality and limited to what is necessary for the purpose of protection.

## **2. Suitable Measure**

The border closures have to be suitable to attain the goal Germany claims to pursue.

In general, measures taken by member states that aim at protecting legitimate interests are suitable to attain that goal if they genuinely reflect a concern to attain that aim in a consistent and systematic manner.<sup>1</sup> This is not the case if the measure is part of an incoherent and self-contradictory concept based on arbitrary discrimination.<sup>2</sup>

Regarding the suitability, it is highly questionable whether a ban of goods lowers infection rates as the Corona Virus normally spreads through human contact which the German government acknowledges in its statement. According to the current state of knowledge it is highly unlikely that imported goods such as imported food or consumer goods and toys, tools, computers, clothes or shoes cause infections with the Coronavirus due to the transmission methods recorded thus far, and the relatively low environmental stability.<sup>3</sup> However, Closing the border while not letting goods inside leads to less travel which reduces social interactions that might lead to the spread of the virus. As long as food needs to be transported by people not letting them in is suitable in order to slower the spread.

Therefore, the measures taken against Paloma MEDRANO are suitable to attain the goal Germany claims to pursue.

## **3. Necessity**

The measures taken against Paloma MEDRANO in question must not go beyond what is necessary to attain public health.<sup>4</sup> So there have to be measures that would be equally suitable

---

<sup>1</sup> Judgment of 16 December 2010, *Josemans v. Burgemeester van Maastricht*, Case C-137/09, EU:C:2010:774, paragraphs 69 and 70.

<sup>2</sup> Judgment of 10 July 1980, *Commission v. France*, Case 152/78, ECLI:EU:C:1980:187, paragraph 18.

<sup>3</sup> <https://www.export.org.uk/news/489076/Potential-impact-of-coronavirus-on-international-supply-chains.htm> (as consulted on 21 May 2020).

<sup>4</sup> Judgment of 10 February 2009, *Commission v. Italy*, Case C-110/05, EU:C:2009:66, paragraph 59.



to attain that aim, but which do not impact the trade between member states as severely as Germany's border closures.<sup>5</sup>

A possible measure, that could be equally suitable to attain the aim could be "green lanes", as a way to decrease interference with the free movement of goods. Green lanes are any of several types of wide unsurfaced paths through the countryside, especially ancient ones once used for herding animals. Goods could enter the country more easily and large gatherings at the borders would be prevented.

Furthermore, a timely warning and more specific rules for transporting goods can be seen as an equally suitable measure. It seems feasible to spread information about hygiene when dealing with goods and implement hygienic regulations for the persons transporting the goods when coming into contact with persons at the destination points. To respect sanitary restrictions inside the trucks-particularly seeing that wearing masks and maintaining a safety distance are considered effective precautions in other areas of life as well- can therefore be seen as an equally suitable measure.

Germany could also differentiate between different European Countries depending on how affected they are by the pandemic. If they would deny goods from very affected countries as Italy and Spain, countries from less affected countries would be able to transport their goods to Germany. This could be a way to partly guarantee the free movement of goods.

Furthermore, as long as Germany herself has implemented rules for all people on its territory that prevent the spread of the virus there is no need to discriminate against foreigners who exercise the freedoms granted to them by the Treaties. Any coherent concept would slow down the spread of the virus regardless of whether it applies to Germans or other EU-citizens. The Court notes, that social restrictions actually fight the spread of the virus and that we do not see how any special restriction at a national border can improve the effectiveness of these social restrictions.

Guaranteeing the free movement of all goods is key in minimizing the short- and long-term negative repercussions of the pandemic for businesses and the supply chains of supermarkets and hospitals. Restricting the transportation of goods has the potential to completely paralyze the European single market and endanger food supply all over Europe. This applies all the more

---

<sup>5</sup> Judgment of 8 February 1983, *Commission v. United Kingdom*, Case 124/81, EU:C:1983:30, paragraph 30.

since Covid-19 already caused an economic crisis.

Concluding, the measures taken by Germany are not necessary to attain public health and cannot serve as a justification of the infringement of the freedom guaranteed by the Treaties. Although the German framework stipulates an exception for “medical and other essential goods”, the German government did not only fail to implement less intrusive measures, but closed the border entirely, thereby hindering the free circulation of goods.

The measures taken against Paloma MEDRANO do not comply with the principle of proportionality.

### **III. Article 45 TFEU – Complaint no. 3**

Elli Lentsiou (born in Greece, residences in Poland) works as a doctor in a hospital in Frankfurt/Oder (Germany) and treats patients with Covid-19. Therefore, she crosses the border between Poland and Germany every day. On 16th of March 2020, the bus she was taking for crossing the border has been stopped by the German Federal Police and she has been asked for staying in quarantine for 14 days after entering German territory. This restriction refers to new regulations of the Federal Republic of Germany that from 15th of March 202, all borders are closed and entering the German territory is only possible for German citizens or with a valid humanitarian reason (like attending a funeral).

The court declares that with those new regulations the Federal Republic of Germany infringes the right of free movement of workers and services (Article 45 TFEU) because for Elli Lentsiou it is no longer possible to work at the hospital in Frankfurt/Oder.

#### **Justification:**

As a Greek citizen living in Poland and working in Frankfurt/Oder (Germany) Elli Lentsiou is making use of her right of free movement for workers found in Article 45 TFEU. The German rules for lowering the spread of the Coronavirus (Covid-19) restrict this right because the borders of German territory have been closed. Hence, Article 45 TFEU is basically applicable.

Restrictions of this right can only be justified because of public policy, security or health (see Article 45 para. 3, 52 TFEU). Without doubt, the Covid-19 can be qualified as a disease of a pandemic type, so restrictions because of public health could be in general possible.

However, following the principle of proportionality, the limitations for Mrs. Lentsiou are not justified by reasons of public health. It's already not approved that such severe measures are really necessary because there are already other restrictions covering the aim to slow the Coronavirus which apply to everyone living on German territory (e.g. hygiene rules, limitation of using public places etc.). Moreover, it is not approved that people from other member states are a "huger risk" related to the spread of the Coronavirus. On the other hand, it is important to minimize social contacts.

But despite this question, the measures are clearly not appropriate. Mrs. Lentsiou is working as a doctor in Frankfurt/Oder and treats Covid-19 patients. Asking her to stay in quarantine for 14 days contradicts the aim of the restrictions to fight the spread of the Coronavirus and to relieve the German health care system, which has been declared by the Federal Republic of Germany.

The German regulation doesn't foresee any means of flexibility to react on individual circumstances and importance of work. As a doctor treating Covid-19 patients, Mrs. Lentsiou can be viewed as a systemically important worker, especially concerning the aim to fight the Coronavirus. Germans, who are systemically workers are also allowed to go to work in Germany, so in the opinion of the court, this is a prohibited discrimination according to the home country of people from other member states because there's no reason why citizens from other member states are a „huger risk“.

In the hearing on 29th of May 2020, Germany pointed out, that they have already enough doctors at hospitals and already have to send part of hospital staff to short time work. Following this argumentation would lead again to the question whether the measures are necessary or not. Because of the regulation of the Federal Republic of Germany to stay in quarantine for 14 day and the additional fact that Mrs. Lentsiou has no apartment in Germany (not necessary related to the short distance from work to home), Mrs. Lentsiou has no possibility to work at her work place in the Hospital at Frankfurt/Oder anymore. According to that, she was completely deprived of her rights.

Like already mentioned above related to the other complaints, there are possible measures which are not as severe as a complete border closure. In case of Mrs. Lentsiou, it would for example be possible to check for a passing document which has to be handed out by the company at which a worker commutes. This also would be feasible because checks for such a document can be handled in a short time and wouldn't lead to long queues at the border.

Consequently, the court sees an infringement of Article 45 TFEU by the Federal Republic of Germany in this case.

#### **IV. Regulation (EU) 2016/399 – Schengen Borders Code**

The Schengen Borders Code provides Member States with the capability of temporarily reintroducing border control at the internal borders. However, the reintroduction of border control at the internal borders must remain an exception and must respect the principle of proportionality. The scope and duration of such a temporary reintroduction of border control at the internal borders is limited in time and should be restricted to the bare minimum needed to respond to the threat in question.

The Court finds, first, that by reintroducing an internal border control the Federal Republic of Germany did not meet the formal requirement of Article 28 (II) of Regulation (EU) 2016/399 , and second, that the measures implemented by the German government do not comply with the principle of proportionality as laid out in Article 28 (III) of Regulation (EU) 2016/399.

##### **1. Article 25 of Regulation (EU) 2016/399**

Under Article 25 of Regulation (EU) 2016/399 Member States can temporarily reintroduce border controls at internal borders. The reintroduction of internal border controls might be exceptionally be necessary in the case of a serious threat to public policy or to internal security. A threat to public policy is defined as a genuine, present and sufficiently serious threat affecting one of the fundamental interests of the society of the Member State.<sup>6</sup>

On the 15<sup>th</sup> of March 202, the German government introduced border controls at its internal borders to meet the challenges posed by the COVID-19 pandemic. On the 12<sup>th</sup> of March 2020 the WHO officially characterized COVID-19 as a pandemic and urged countries to implement a containment strategy and accelerate their efforts in order to stop transmission and prevent the spread of the virus.

The jurisprudence of the European Court of Justice stated as early as 1976 that “health and the life of humans rank first (...) and it is for the Member States, within the limits imposed by the Treaty, to decide what degree of protection they intend to assure (...)”.<sup>7</sup> Hence, it is at the

---

<sup>6</sup> CJEU, Joined Cases C-381/18 and C-382/18 par. 18, G.S. and V.G. v Staatssecretaris van Justitie en Veiligheid [2019], EU:C:2019:1072; CJEU, C-673/16 par. 44, Relu Adrian Coman and Others v Inspectoratul General pentru Imigrări and Ministerul Afacerilor Interne [2018], EU:C:2018:385

<sup>7</sup> Judgment of 10 July 1980, *de Peijper v. Sterling Drug Inc.*, Case 15/74, EU:C:1974:114.

Member States' own discretion to introduce appropriate measures in order to assure its population's health. As the reintroduction of border control is a prerogative of the Member States., the Commission may only issue an opinion with regard to the necessity of the measure and its proportionality but cannot veto such a decision if it is taken by a Member State.

At that time, the novel respiratory virus that originated in Wuhan, China, last December had already spread to six continents. In March 2020 the Robert Koch Institute (RKI) has changed its COVID-19 threat risk for Germany from "moderate" to "high". Germany estimated over 4.838 confirmed COVID-19 cases, including 12 deaths. At this point the German federal and state government had already taken drastic measures, i.e. closing schools and stores and implementing hygienic rules, that brought the public life to an almost complete standstill. Since the German government expected that Germany's health care system will be extremely challenged by the wave of COVID-19 cases, several measures within the health sector were taken in order to prevent a collapse of intensive care units.

Due to the exponential increase in the number of cases challenging national health care systems COVID-19 can be qualified as a **serious threat to public policy** in terms of Article 25 of Regulation (EU) 2016/399. The Court finds that with regard to the spread of the highly contagious virus the border controls introduced by the Federal Republic of Germany on March 15 falls within the scope of Article 25 of Regulation (EU) 2016/399.

## **2. Article 28 of Regulation (EU) 2016/399**

Article 25 (II) of the Regulation (EU) 2016/399 states that the procedural requirements laid down in Article 27, 28 and 29 of the Regulation (EU) 2016/399 must be obliged by the Member State introducing an internal border control.

According to Article 28 of Regulation (EU) 2016/399 Member States may reintroduce border control for ten days without prior notification, if immediate action needs to be taken in order to adequately respond to a threat.

As the World Health Organisation had already urged European countries to implement a containment strategy in order to fight the rapid escalation of COVID-19 in the European region on March 12, the COVID-19 pandemic qualifies as a case requiring immediate action. However, the Court notes, that the urgency of the measures to be taken does not exonerate a Member State from its obligation to inform such a case to the Commission and other Member States immediately.

When the German government introduced new regulations concerning the reintroduction of internal border controls on March 15, the government did neither inform the European Commission nor other Member States. The only time that the German government officially informed the European Commission was on March 30, after the Commission had asked the German government about their border controls.

The Court therefore finds, that the reintroduction of Germany's internal border control does not comply with the required procedure laid down in Article 28 of Regulation 2016/399. Germany **infringed** Article 28 (2) of Regulation 2016/399.

### **3. Principle of proportionality – Article 28 (III) of Regulation 2016/399**

In a case requiring immediate action a Member State should take in account the criteria referred to in Article 26, including an updated assessment of the necessity and the proportionality of the measure, and should take into account any new elements (Article 28 (III) of Regulation 2016/399).

Article 26 of Regulation 2016/399 explicitly requires States implementing border controls to assess the “extent to which such a measure is likely to adequately remedy the threat to public policy” and the “proportionality of the measure in relation to the threat”.

The German government stated that the aim of the reintroduction of internal border controls was to slow down or ideally avoid the further spread of the virus across the borders. The protection of public health clearly qualifies as a **legitimate aim**.

To achieve this aim Germany implemented new regulations on March 15: All German borders were closed for all kinds of private and public transport as well as the transportation of goods. Only German nationals were allowed to enter the Federal Republic of Germany. The transportation of medical and other essential goods and crossing the borders on humanitarian grounds were the only exceptions to that rule. In itself, these rules were **appropriate** in achieving the legitimate aim of preventing the spread of the virus.

However, the Court finds, that the border regulations implemented by the German government were **not necessary** to achieve the legitimate aim. There are less intrusive means at hand to achieve the purpose of the measure:

### **a. Concerning private and public transport**

Concerning private and public transport a less severe measure could have been the implementation of less restrictive regulations guarantying the free movement of systemically relevant workers.

Especially in times of the epidemic it is vital that Member States permit the crossing of frontier workers, especially those working in systemically important sectors (e.g. in the health sector). The regulation implemented by the German government does not include an exception for those systemically relevant workers. Besides that, the exception allowing foreign nationals to enter the Federal Republic of Germany on humanitarian grounds is to constrained and infringes the free movement of persons and services.

Moreover, concerning the private transport, social distancing or quarantine measures could have been implemented upon foreign nationals entering the Federal Republic of Germany in order to prevent or slow down the viral transmission of the virus. These measures would have been less intrusive, but would still show the same effect and thus subserve as suitable and effective measures. As Germany had already adopted several measures, for example the closure of schools and universities, the implementation of remote working polices or social distancing regulations, at that time, there was clearly no necessity to nearly completely prohibit the entry of foreign nationals. People entering the Federal Republic of Germany had to aside by these national rules anyway and did therefore not pose an additional risk.

**Consequently, the Court notes, that the border regulations concerning private and public transport were not necessary.**

### **b. Concerning the transportation of goods**

Concerning the transportation of goods, the introduction of so-called green lanes or the implementation of additional hygienic regulations could constitute a more effective and less severe measure to minimize the spread of the virus across the borders on the one hand and to simultaneously preserve the functioning of the single market on the other hand. The Court notes, that a nearly total ban of all kinds of goods has the potential to completely paralyze the European single market and to endanger the EU wide operation of supply chains.

In order to ensure the continuous flow of goods during the pandemic ensuring the operation of EU-wide supply chains, green lanes pose a collective approach to cross border transport. By implementing green lanes, huge gatherings at borders can be prohibited and coordinated and save border crossings can be ensured.

Although the German framework stipulates an exception for “medical and other essential goods”, the German government did not only fail to implement less intrusive measures, but closed the border entirely, thereby hindering the free circulation of goods.

Hence, the border regulations concerning the transportation of goods were not necessary.

**Consequently, the Court finds, that the measures taken by the Federal Republic of Germany were not proportionate. The Federal Republic of Germany infringed Article. 28 (III) of Regulation 2016/399.**

## **V. Principle of solidarity and coordination**

Finally, the Court notes, that the reintroduction of internal border controls conflict with the principle of solidarity and coordination within the EU.

The principle of solidarity of the European Union is a fundamental principle based on sharing both the advantages, i.e. prosperity, and the burdens equally and justly among members.

By not informing other Member States of its border controls, the German government contravened the principle of loyal cooperation between Member States laid down in Article 4 III TFEU. Due to the high risk and rapid spread of the corona virus immediate and appropriate measures were clearly required. Nevertheless, the urgency of the measures to be taken in the face of the spread of Covid-19 do not justify a unilateral national action without regard to other Member States.

The Court wants to point out, that only a shared spirit of global solidarity and responsibility can defeat the COVID-19 crisis.

## **C. Costs**

Under Article 69(2) of the Rules of Procedure, the unsuccessful party is to be ordered to pay the costs if they have been applied for in the successful party’s pleadings. Since the Commission applied for costs and the Federal Republic of Germany’s failure to fulfil its obligations has been established, the latter must be ordered to pay the costs.



**On those grounds, the Court hereby rules:**

**By implementing the new regulations concerning the reintroduction of internal border controls implemented on March 15, the Federal Republic of Germany has violated Articles 34 and 45 of the Treaty of the Functioning of the European Union.**

**Further, with these new regulations the Federal Republic of Germany has violated Article 28 of Regulation (EU) 2016/399.**

**Third, the reintroduction of internal border controls conflict with the principle of solidarity and coordination within the European Union.**

**Finally, the Court orders the Federal Republic of Germany to pay the costs.**