



Press and Information

Court of Justice of the European Union
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Judgment in Case C-658/19
Commission v Spain

On account of its ongoing failure to transpose a directive and to notify transposition measures, Spain is ordered to pay a lump sum of € 15 million and a daily penalty payment of € 89 000

The directive in question is the Directive on the protection of personal data for the purposes of the prevention and detection of criminal offences

The Commission asked the Court of Justice to declare that Spain has failed to fulfil its obligations under the Directive on the protection of personal data.¹ The Commission considers that that Member State failed to adopt national measures transposing the Directive and to notify those measures. It therefore asked the Court to impose on Spain, pursuant to the provisions of Article 260(3) TFEU, first, a penalty payment of € 89 548.20 for each day of delay as from the date of delivery of the judgment in the present case and, second, the payment of a lump sum of approximately € 15 500 000.²

On 20 July 2018, since the Commission had not received from Spain any information on the measures transposing the Directive by the expiry of the deadline laid down (6 May 2018), the Commission had sent a letter of formal notice to that Member State requesting it to notify those measures. That letter having had no effect, the Commission sent Spain a reasoned opinion on 25 January 2019, inviting it to adopt the necessary measures within a two-month period.

In its response to the reasoned opinion, dated 27 March 2019, Spain stated that the administrative procedure for the adoption of the measures transposing the Directive was ongoing and was to be finalised at the end of July 2019 and that the parliamentary procedure was to be completed at the end of March 2020. In addition, it stated that the delay in transposition was essentially due to the particular political context and the need to transpose that directive by means of an organic law.

Spain does not dispute that it has failed to fulfil its obligations to adopt and notify the measures transposing the Directive and accepts that the very exceptional institutional circumstances which, in its view, delayed the activities of the national government and parliament for the purpose of the adoption of the required transposition measures (inter alia, the interim nature, during the period in

¹ Directive (EU) 2016/680 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data by competent authorities for the purposes of the prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties, and on the free movement of such data, and repealing Council Framework Decision 2008/977/JHA (OJ 2016 L 119, p. 89).

² Article 260(3) TFEU offers the Commission the possibility to request the Court, in the context of an action for failure to fulfil obligations based on the failure to notify measures transposing a directive adopted under a legislative procedure, to impose on the Member State concerned the payment of a lump sum or penalty payment up to a maximum amount specified by the Commission. The objective of that system is twofold: it is a way of encouraging Member States to put an end as soon as possible to a breach of obligations which would otherwise tend to persist, but also to simplify and speed up the procedure for imposing financial penalties for failures to comply with the obligation to notify a national measure transposing a directive adopted through a legislative procedure. Previously, the imposition of a financial penalty on Member States which had failed to comply in a timely manner with an earlier judgment of the Court and had failed to respect their obligations to transpose a directive may have occurred only years after the delivery of that judgment. That provision was applied in the judgments of the Court of 8 July 2019, *Commission v Belgium (Article 260(3) TFEU – High-speed networks)*, [C-543/17](#) (see [CP 88/19](#)) as regards the imposition of a penalty payment, of 16 July 2020, *Commission v Romania (Anti-money laundering)*, [C-549/18](#), and *Commission v Ireland (Anti-money laundering)*, [C-550/18](#) (see [CP 92/20](#)), and of 13 January 2021, *Commission v Slovenia (MiFID II)*, [C-628/18](#), as regards the imposition of a lump sum.

question, of the Spanish government which did not have a majority in the Chamber of Deputies and was only dealing with day-to-day business pending the formation of a new government) do not allow the alleged infringement³ to be justified. However, that Member State maintains that the circumstances referred to are particularly relevant to assess the proportionality of the penalties proposed by the Commission.

By today's judgment, the Court declares that Spain has failed to fulfil its obligations.

The Court notes that it is common ground that, by the expiry of the period laid down in the Commission's reasoned opinion, on 25 March 2019, Spain had not adopted the measures necessary to ensure the transposition of the Directive nor notified those measures to the Commission.

The Court considers that the infringement thus established falls within the scope of Article 260(3) TFEU since no transposition measure within the meaning of that provision has been notified to the Commission by the expiry of that period.

As regards the financial penalties requested by the Commission, the Court points out, in the first place, that the imposition of a **penalty payment** is, in principle, justified only if the failure persists up to the time of the Court's examination of the facts. In the present case, the Court finds that **Spain persisted in its failure to fulfil its obligations** since, at the close of the written procedure before the Court, on 6 May 2020, it had neither adopted nor notified the measures necessary to ensure the transposition of the provisions of the Directive into Spanish law. The Court considers that the imposition of a penalty payment is an appropriate means by which to ensure that that Member State puts a prompt end to the infringement established. However, the Court states that that penalty payment should be imposed only in so far as the infringement persists at the date of delivery of the judgment.

In the second place, the Court notes that all the legal and factual circumstances surrounding the infringement established are an indicator that the effective prevention of future repetition of similar infringements affecting the full effectiveness of EU law requires the adoption of a dissuasive measure such as the imposition of a **lump sum payment**.

In the light of the seriousness and duration of the infringement, the Court orders Spain to pay the Commission a lump sum in the amount of € 15 000 000 and, should the infringement established have persisted up to the date of delivery of its judgment, as from that date and until the infringement established has been brought to an end, a daily penalty payment of € 89 000. The present judgment is the first in which the Court imposes, pursuant to Article 260(3) TFEU, the two types of financial penalties concurrently.

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.

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

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Pictures of the delivery of the judgment are available from "[Europe by Satellite](#)" ☎ (+32) 2 2964106

³ Judgment of the Court of 13 July 2017, *Commission v Spain*, [C-388/16](#) (see also [CP 77/17](#)).