



Greece is ordered to make a lump sum payment of €5 500 000 and periodic penalty payments of over €4 000 000 for every six months' delay for failure to recover State aid granted to Larco

The Court first declared that Greece had failed to fulfil its obligations in a judgment delivered in 2017

Larco General Mining & Metallurgical Company SA ('Larco') is a Greek mining and metallurgical undertaking specialising in the extraction and processing of laterite ore, the extraction of lignite and the production of ferronickel.

In March 2013, the Commission initiated a formal investigation procedure in respect of various amounts of aid granted by Greece to Larco, in particular State guarantees granted for the years 2008, 2010 and 2011, as well as a capital increase in 2009. In March 2014, the Commission decided ¹ that that aid was unlawful and incompatible with the internal market, and was to be recovered.

In the interim, Greece had informed the Commission of its intention to sell certain assets of Larco through two separate calls for tender. Following the two tendering procedures and irrespective of their outcomes, Larco would be put in bankruptcy in accordance with national legislation, and its remaining assets would be sold as part of the liquidation procedure. The Commission considered, first, that that sale did not constitute State aid and, second, that the recovery of the State aid in question would not be transferred to the new owners of those assets.

Taking the view that Greece had failed to comply with its obligations pursuant to the 2014 Decision, in 2016 the Commission brought **an initial action** before the Court of Justice against that Member State **for failure to fulfil obligations. By judgment of 9 November 2017, ² the Court declared that Greece had failed to fulfil its obligations to recover unlawful and incompatible State aid.**

Considering that Greece had still not complied with that judgment, the Commission brought **the present action for failure to fulfil obligations** on 29 January 2020. In this second action, it requested that the Court order that Member State to pay a lump sum and a periodic penalty payment.

In February 2020, on account of Larco's financial difficulties, Greece then made provision for that undertaking to be put under special administration. ³ According to the Commission, Greece adopted measures with a view to recovering the State aid in question only after 29 January 2020,

¹ Commission Decision 2014/539/EU of 27 March 2014 on State aid SA.34572 (13/C) (ex 13/NN) implemented by Greece for Larco General Mining Metallurgical Company SA (OJ 2014 L 254, p. 24). That decision was upheld by the judgment of the General Court of 1 February 2018, *Larco v Commission*, [T-423/14](#). However, by its judgment of 26 March 2018, the Court of Justice in part set aside the decision of the General Court, [C-244/18 P](#). That case, which was referred back to the General Court, is pending (T-423/14 RENV).

² Judgment of the Court of 9 November 2017, *Commission v Greece*, [C-481/16](#).

³ These are specific insolvency proceedings, in which the special administrator expeditiously proceeds with the sale of the assets of the undertaking concerned and organises a public tendering procedure in order to avoid any depreciation of those assets. Registration in the schedule of liabilities does not take place prior to the liquidation of the undertaking, but rather once its assets have been sold.

the date on which the Commission brought the second action for failure to fulfil obligations. Furthermore, in the Commission's view, the failure continued up to the time of the Court's examination of the facts.

By today's judgment, the Court finds, first, that **Greece failed to fulfil its obligations to take all necessary measures to comply with the 2017 judgment as at 25 March 2019** (expiry of the time limit prescribed by the Commission in its letter of formal notice) and, second, that **the failure continued up to the Court's examination of the facts**.

As a preliminary point, the Court recalls its case-law, according to which the Member State to which a Commission decision requiring recovery of unlawful aid declared incompatible with the internal market is addressed is obliged to take all measures necessary to ensure implementation of that decision. It must succeed in actually recovering the sums owed in order to eliminate the distortion of competition caused by the anticompetitive advantage procured by that aid. The fact that an undertaking is in difficulty or is insolvent does not affect the obligation to recover unlawfully granted aid. The elimination of the distortion of competition brought about by that aid may, in principle, be achieved through registration of the liability relating to the repayment of the aid in question in the schedule of liabilities. However, such registration can satisfy the recovery obligation only if, where the State authorities are unable to recover the full amount of aid, the insolvency proceedings result in the definitive cessation of the undertaking's activities. Consequently, the definitive cessation of the activities of the undertaking receiving aid is necessary only where the recovery of the entire amount of the aid remains impossible throughout the insolvency proceedings.

In the present case, the Court points out that Greece adopted measures for the recovery of the State aid in question only **after 29 January 2020**, the date on which the present action was brought. Larco was put under special administration in February 2020, that is, almost a year after the expiry of the time limit prescribed by the Commission. Furthermore, in March 2020, Greece requested that Larco pay the amount of aid in question and, in May 2020, it ordered the recovery of the full amount of that aid. Moreover, the Court finds that the failure continued up to the time of the Court's examination of the facts.

In those circumstances, the Court considers it appropriate to impose **financial penalties on Greece in the form of a six-monthly penalty payment** in order to ensure full compliance with the 2017 judgment and to enable the Commission to assess the progress of the measures implementing that judgment. The Court considers it necessary, moreover, to impose **a lump sum** as a deterrent measure intended to **prevent the recurrence** of similar infringements of EU law.

For the purposes of fixing the amount of the penalties, the Court takes into consideration the seriousness and duration of the infringement and the ability to pay of the Member State concerned. As regards **the seriousness of the infringement**, the Court points to the **fundamental nature of the treaty provisions on State aid**, as well as **the substantial nature of the amount of unrecovered aid** (which stood at €160 million as at 14 May 2020) and the fact that **the ferronickel market is cross-border**. The Court also finds there to be **repeated infringements** on the part of Greece in the field of State aid.⁴ As regards the **duration of the infringement**, this is **considerable**: over four years since the initial judgment of the Court. For the purposes of assessing Greece's **ability to pay**, the Court bases its decision on the latter's gross domestic product (GDP) as the predominant factor. Furthermore, the Court holds that it is not necessary to take account of the institutional weight expressed by the number of votes which that Member State has within the European Parliament in order to set sufficiently proportionate and dissuasive penalties.

⁴ Inter alia, Greece has been declared to have failed to fulfil obligations, first, in actions under Article 108(2) TFEU for failure to implement decisions on the recovery of State aid, in the cases giving rise to the judgments of 1 March 2012, *Commission v Greece*, [C-354/10](#); of 28 June 2012, *Commission v Greece*, [C-485/10](#); of 17 October 2013, *Commission v Greece*, [C-263/12](#); and of 17 January 2018, *Commission v Greece*, [C-363/16](#); and, second, in actions under Article 228(2), third paragraph EC in the case giving rise to the judgment of 7 July 2009, *Commission v Greece*, [C-369/07](#) (see [PR No 59/09](#)).

Accordingly, the Court orders Greece to pay to the European Union budget **a lump sum of €5 500 000 and a penalty payment of €4 368 000 per six months' delay** in applying the measures necessary to comply with the 2017 judgment, as from today.

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.

Press contact: Jacques René Zammit ☎ (+352) 4303 3355