



Reports of Cases

Judgment of the Court (Third Chamber) of 17 September 2015 — *Commission v Italy*

(Case C-367/14)¹

(Failure of a Member State to fulfil obligations — State aid — Aid granted to firms located in Venice and Chioggia — Reduction of social security contributions — Failure to recover aid within the prescribed period — Judgment of the Court establishing that a Member State has failed to fulfil its obligations — Non-compliance — Article 260(2) TFEU — Pecuniary penalties — Penalty payment — Lump sum)

1. *Actions for failure to fulfil obligations — Judgment of the Court establishing the failure of a Member State to fulfil its obligations — Period for implementation — Reference date for assessing whether there has been a failure to fulfil obligations (Art. 260 TFEU) (see para. 35)*
2. *Actions for failure to fulfil obligations — Judgment of the Court establishing the failure of a Member State to fulfil its obligations — Breach of the obligation to comply with the judgment — Proof of failure — Burden of proof on Commission — Submission of evidence of continued failure to fulfil obligations — Incumbent on Member State concerned to refute evidence (Art. 260(2) TFEU) (see paras 36, 56)*
3. *Actions for failure to fulfil obligations — Judgment of the Court establishing the failure of a Member State to fulfil its obligations — Breach of the obligation to comply with the judgment — Defences — Literal interpretation implying an obligation merely to take steps to recover the aid, without there being an obligation actually to recover it — Not permissible (Art. 260 TFEU) (see paras 40-48)*
4. *Member States — Obligations — Failure to fulfil obligations — National system pleaded as justification — Not permissible (Art. 260 TFEU) (see para. 51)*
5. *Actions for failure to fulfil obligations — Judgment of the Court establishing the failure of a Member State to fulfil its obligations — Breach of the obligation to comply with the judgment — Failure to comply with the obligation to recover aid granted unlawfully — Defences — Absolute impossibility of implementation — Criteria for assessment — Difficulties in implementing — Delay in the implementation of the decision ordering recovery attributable to the late intervention of the Member State concerned — Not included (Art. 260(2) TFEU) (see paras 52-55)*

¹ — OJ C 395, 10.11.2014.

6. *Actions for failure to fulfil obligations — Judgment of the Court establishing the failure of a Member State to fulfil its obligations — Breach of the obligation to comply with the judgment — Failure to comply with the obligation to recover unlawful aid — Defences — Recipients in difficulty or bankrupt — No effect — Obligation to use all the legal means available, including liquidation of the beneficiary — Burden on the issuing Member State to prove that diligence was exercised in recovering the aid granted unlawfully (Art. 260(2) TFEU) (see paras 60, 61)*
7. *Actions for failure to fulfil obligations — Judgment of the Court establishing the failure of a Member State to fulfil its obligations — Breach of the obligation to comply with the judgment — Pecuniary penalties — Subject-matter — Choice of the appropriate penalty — Elements to be taken into consideration — Discretion of the Court — Cumulation of penalties — Lawfulness (Art. 260(2) TFEU) (cf. points 85-87, 114-116)*
8. *Actions for failure to fulfil obligations — Judgment of the Court establishing the failure of a Member State to fulfil its obligations — Breach of the obligation to comply with the judgment — Pecuniary penalties — Periodic penalty payment — Determination of the form to be taken and of the amount — Discretion of the Court — Criteria (Art. 260(2) TFEU) (see paras 88, 89, 91-95, 99, 105)*
9. *Actions for failure to fulfil obligations — Judgment of the Court establishing the failure of a Member State to fulfil its obligations — Breach of the obligation to comply with the judgment — Pecuniary penalties — Periodic penalty payment — Calculation of the amount — Consistent penalty and gradually decreasing penalty (Art. 260(2) TFEU) (see paras 106-112)*
10. *Actions for failure to fulfil obligations — Judgment of the Court establishing the failure of a Member State to fulfil its obligations — Breach of the obligation to comply with the judgment — Pecuniary penalties — Imposition of a lump sum payment — Discretion of the Court — Criteria for assessment (Art. 260(2) TFEU) (see paras 117-127)*

Operative part

The Court:

1. Declares that, by failing to adopt all the measures necessary to ensure compliance with the judgment in *Commission v Italy* (C-302/09, EU:C:2011:634) before the expiry of the period prescribed in the letter of formal notice sent by the European Commission on 21 November 2012, the Italian Republic has failed to fulfil its obligations under Article 260(1) TFEU;

2. Orders the Italian Republic to pay a penalty payment of EUR 12 million to the European Commission, into the 'European Union own resources' account, for every six months of delay in implementing the necessary measures to comply with the judgment in *Commission v Italy* (C-302/09, EU:C:2011:634), from the day on which judgment is delivered in the present case until the judgment in *Commission v Italy* has been complied with;
3. Orders the Italian Republic to pay a lump sum of EUR 30 million to the European Commission, into the 'European Union own resources' account;
4. Orders the Italian Republic to pay the costs.