



Reports of Cases

Case C-549/18

European Commission

v

Romania

Judgment of the Court (Grand Chamber), 16 July 2020

(Failure of a Member State to fulfil obligations — Article 258 TFEU — Prevention of the use of the financial system for the purposes of money laundering or terrorist financing — Directive (EU) 2015/849 — Failure to transpose and/or to notify transposition measures — Article 260(3) TFEU — Application for an order to pay a lump sum)

1. *Actions for failure to fulfil obligations — Examination of the merits by the Court — Situation to be taken into consideration — Situation on expiry of the period laid down in the reasoned opinion*
(Art. 258 TFEU)

(see paragraphs 19, 21)

2. *Acts of the institutions — Directives — Implementation by Member States — Directive which, in order to be implemented, provides that the national measures transposing it must contain a reference to that directive — Effect — Obligation of the Member States to adopt a specific act transposing the directive*
(Art. 288, third para., TFEU; European Parliament and Council Directive 2015/849, Art. 67)

(see paragraph 20)

3. *Actions for failure to fulfil obligations — Disregard of the obligations imposed by a directive — Obligation to notify transposition measures — Scope*
(Art. 260(3) TFEU)

(see paragraphs 44-46)

4. *Actions for failure to fulfil obligations — Disregard of the obligations imposed by a directive — Obligation to notify transposition measures — Application by the Commission for an order imposing a financial penalty on the Member State concerned — Discretion — Effect — No obligation to state reasons on a case-by-case basis for its decision to request a financial penalty — Obligation to state reasons for the nature and the amount of the financial penalty*

*sought — Taking into account of the guidelines adopted by the Commission —
Judicial review — Limits
(Art. 260(3) TFEU)*

(see paragraphs 48-53)

5. *Actions for failure to fulfil obligations — Judgment of the Court establishing a failure to fulfil obligations — Failure to fulfil the obligation to notify measures transposing a directive — Financial penalties — Lump sum — Failure not continuing up to the Court's examination of the facts — Irrelevant — Failure having persisted for a long period — Penalty not disproportionate
(Art. 260(3) TFEU)*

(see paragraphs 64-67)

6. *Actions for failure to fulfil obligations — Judgment of the Court establishing a failure to fulfil obligations — Failure to fulfil the obligation to notify measures transposing a directive — Financial penalties — Discretion of the Court — Criteria
(Art. 260(3) TFEU)*

(see paragraphs 68-71)

7. *Actions for failure to fulfil obligations — Judgment of the Court establishing a failure to fulfil obligations — Failure to fulfil the obligation to notify measures transposing a directive — Financial penalties — Lump sum — Calculation of the amount — Criteria
(Art. 260(3) TFEU)*

(see paragraphs 72-86)

Résumé

Romania and Ireland are ordered to pay the Commission a lump sum of EUR 3 000 000 and EUR 2 000 000 respectively

Both Member States failed to transpose in full, within the period prescribed, the directive on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing

Directive 2015/849¹ aims to prevent the use of the EU's financial system for the purposes of money laundering and terrorist financing. Member States had to transpose that directive into their national law by 26 June 2017 and notify the European Commission of the measures adopted in that regard.

¹ Directive (EU) 2015/849 of the European Parliament and of the Council of 20 May 2015 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing, amending Regulation (EU) No 648/2012 of the European Parliament and of the Council, and repealing Directive 2005/60/EC of the European Parliament and of the Council and Commission Directive 2006/70/EC (OJ 2015 L 141, p. 73).

On 27 August 2018, the Commission brought two actions before the Court for failure to fulfil obligations, submitting that Romania, on the one hand, and Ireland, on the other, had, within the period set for them in the respective reasoned opinions, neither transposed Directive 2015/849 in full nor notified the corresponding national transposition provisions. In addition, on the basis of Article 260(3) TFEU,² the Commission sought an order that Romania and Ireland should, first, pay a daily penalty payment, as from the date of delivery of the judgment, for failure to fulfil the obligation to notify the measures transposing that directive and, secondly, a lump sum. Subsequently, the Commission informed the Court that it was withdrawing part of its actions inasmuch as it no longer sought the imposition of a daily penalty payment, since that claim had become devoid of purpose as a result of Directive 2015/849 having been transposed in full into Romanian law and Irish law.

In that context, Romania and Ireland disputed the application of the system of penalties provided for in Article 260(3) TFEU. Both Member States also maintained that the Commission's application for a lump sum to be imposed was not only unjustified, but also disproportionate in the light of the facts of the case and the objective of that type of financial penalty. They complained that the Commission failed to provide a detailed statement of reasons, on a case-by-case basis, for its decision to request the imposition of such a penalty in the present cases.

By two Grand Chamber judgments delivered on 16 July 2020, the Court upheld the actions brought by the Commission. It therefore held, in the first place, that, on the expiry of the period set them in the reasoned opinion, Romania and Ireland had neither adopted the national measures transposing Directive 2015/849 nor notified such measures to the Commission and that, consequently, they failed to fulfil their obligations under that directive.

In the second place, the Court held that Article 260(3) TFEU is applicable in the present cases.³ The Court pointed out that the obligation to notify transposition measures, within the meaning of that provision, refers to the obligation of the Member States to provide sufficiently clear and precise information on the measures transposing a directive. Compliance with that obligation required, in the present cases, the Member States to state, for each provision of the directive, the national provision or provisions ensuring its transposition. Noting that the Commission had established that Romania and Ireland had failed to notify the measures transposing Directive 2015/849 within the period prescribed in the reasoned opinion, the Court held, first, that the failure to fulfil obligations thus declared falls within the scope of Article 260(3) TFEU.

Secondly, the Court pointed out that the Commission is not required to state reasons on a case-by-case basis for its decision to seek the imposition of a financial penalty under Article 260(3) TFEU. The Court found that the conditions for applying Article 260(3) TFEU cannot be more restrictive than those governing the implementation of Article 258 TFEU, since Article 260(3) TFEU is only an ancillary mechanism of the infringement proceedings, the commencement of which falls within the Commission's discretion, which is not for review by the Court. That absence of a statement of reasons does not affect the procedural guarantees of the Member State in question, since when it imposes such a penalty, the Court is obliged to state reasons.

² Article 260(3) TFEU enables the Court to impose a financial penalty on the Member State concerned (lump sum or daily penalty payment) in the event of failure to fulfil the 'obligation to notify measures transposing [an EU] directive' to the Commission.

³ The Court applied that provision of the FEU Treaty for the first time in the judgment of 8 July 2019, *Commission v Belgium* (Article 260(3) TFEU — *High-speed networks*) (C-543/17, EU:C:2019:573).

Nonetheless, the Court clarified that the Commission is still required to state reasons for the nature and the amount of the financial penalty sought, taking into account in that regard the guidelines which it has adopted, since, in the context of proceedings brought under Article 260(3) TFEU, the Court has only a limited power to assess. Where the Court finds that there is an infringement, the Commission's proposals are binding on it as to the nature of the financial penalty which the Court may impose and the maximum amount of the penalty which it may set.

In the third place, as regards the imposition of a lump sum in the present cases, the Court pointed out that the objective pursued by the introduction of the system set out in Article 260(3) TFEU is not only to induce Member States to put an end as soon as possible to a breach of obligations which, in the absence of such a measure, would 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. The Court therefore held that an application of the Commission which, as in the present cases, sought the imposition of a lump sum cannot be dismissed as disproportionate solely because it concerns a failure to fulfil obligations which, having persisted over time, came to an end at the time of the Court's examination of the facts, since the imposition of a lump sum payment is based on the assessment of the effects on public and private interests of the failure of the Member State concerned to comply with its obligations, in particular where the breach has persisted for a long period.

In the fourth place, as regards the calculation of the lump sum which it is appropriate to impose in the present cases, the Court pointed out that, in exercising its discretion in the matter, as delimited by the Commission's proposals, it is for the Court to fix the amount of the lump sum which may be imposed on a Member State pursuant to Article 260(3) TFEU, in an amount appropriate to the circumstances and proportionate to the failure to fulfil obligations. Relevant considerations in that respect include factors such as the seriousness of the failure to fulfil obligations, the length of time for which the failure has persisted and the relevant Member State's ability to pay.

As regards, first, the seriousness of the infringement, the Court found that although Romania and Ireland did, in the course of the proceedings, put an end to the failure to fulfil obligations complained of, the fact remains that that failure to fulfil obligations existed on the expiry of the period prescribed in the respective reasoned opinions, with the result that the effectiveness of EU law was not ensured at all times.

As regards, secondly, the assessment of the duration of the infringement, the Court recalled that that duration must, as a rule, be assessed by reference to the date on which the Court assesses the facts, that is the date of conclusion of the proceedings. As regards the beginning of the period which must be taken into account in order to set the amount of the lump sum to be imposed pursuant to Article 260(3) TFEU, the relevant date for evaluating the duration of the infringement is not the date of expiry of the period prescribed in the reasoned opinion (used for determining the daily penalty payment to be imposed), but the date of expiry of the transposition period laid down in the directive in question. That provision aims to encourage Member States to transpose directives within the deadlines set by the EU legislature and to ensure the full effectiveness of EU legislation. Any other approach would indeed be tantamount to calling into question the effectiveness of the provisions of directives setting the date on which the measures transposing those directives must enter into force and to granting an additional transposition period, whose duration would moreover vary according to the speed with which the Commission

initiated the pre-litigation procedure, without its nonetheless being possible to take into account the duration of that period when evaluating the duration of the failure to fulfil the obligations at issue. Consequently, the Court concluded that the failure to fulfil obligations by Romania and Ireland persisted for somewhat more than two years.

As regards, thirdly, the ability to pay of the Member State concerned, the Court pointed out that it is necessary to take account of recent trends in that Member State's gross domestic product (GDP) at the time of the Court's examination of the facts.

Consequently, having regard to all the circumstances of the present cases and in the light of the Court's discretion under Article 260(3) TFEU, the Court ordered Romania and Ireland to pay the Commission a lump sum of EUR 3 000 000 and EUR 2 000 000, respectively.