



Press and Information

General Court of the European Union
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Judgment in Case T-33/09
Portugal v Commission

When collecting a penalty payment set by the Court of Justice, the Commission cannot make an assessment of the compliance of national legislation with EU law

That assessment comes within the exclusive jurisdiction of the Court of Justice and the Commission was required to initiate new infringement proceedings

By judgment of 14 October 2004¹, the Court of Justice found that Portugal had failed to fulfil its obligations by failing to repeal its national legislation making the award of damages to persons harmed by a breach of European Union law conditional on proof of fault or fraud in connection with public contracts². Taking the view that Portugal had not complied with that judgment, on 7 February 2006 the Commission brought a new action seeking the imposition of a penalty payment. By its judgment of 10 January 2008³, the Court of Justice held that Portugal had not complied with its first judgment of 2004, as the contested national legislation had not yet been repealed. The Court of Justice therefore ordered Portugal to pay to the Commission a penalty payment of €19 392 for every day of delay in implementing the measures necessary to comply with the first judgment of 2004, from the date of delivery of that judgment, 10 January 2008.

Meanwhile, on 31 December 2007, Portugal adopted Law 67/2007, which entered into force on 30 January 2008, repealing the national legislation in question and establishing a new system of compensation for damage caused by the State. The Commission considered, however, that that law did not constitute a measure of complete and adequate compliance with the 2004 judgment. It took the view, in that regard, that this new system of compensation did not bring Portuguese law into line with its obligations under the directive relating to the application of review procedures to the award of public contracts. Portugal then adopted Law 31/2008, amending Law 67/2007, while considering that the adoption of Law 67/2007 involved all the measures necessary to comply with the 2004 judgment. Law 31/2008 came into force on 18 July 2008.

In its decision of 25 November 2008, the Commission stated that Law 67/2007 did not constitute adequate compliance with the 2004 judgment and that the national authorities had complied with the judgment of the Court of Justice only by adopting Law 31/2008. Consequently, it sought payment by Portugal of the penalty payment in the total amount of €3 665 088 for the period from 10 January to 17 July 2008. Portugal, maintaining that Portuguese law had complied with the 2004 judgment since 30 January 2008 – the date when Law 67/2007 came into force – challenged the decision of the Commission determining the total amount of the penalty payment and applied to the General Court to annul it.

In its judgment delivered today, **the General Court annuls the decision of the Commission.**

First, the General Court rules on its jurisdiction to give judgment in this action. In this regard, it observes that **European Union law does not lay down the detailed rules for the enforcement of a judgment by the Court of Justice declaring a failure to fulfil obligations and ordering a Member State to pay a penalty payment to the Commission.** Likewise, European Union law

¹ Judgment in Case [C-275/03](#) *Commission v Portugal*

² Obligation resulting from Articles 1(1) and 2(1)(c) of Council Directive 89/665/EEC of 21 December 1989 on the coordination of the laws, regulations and administrative provisions relating to the application of review procedures to the award of public supply and public works contracts (OJ 1989 L 395, p. 33).

³ Judgment in Case [C-70/06](#) *Commission v Portugal*.

does not make any specific provision regarding the settlement of disputes that may arise between a Member State and the Commission on the occasion of the enforcement of such a judgment. However, the General Court states that the **Commission is responsible for recovering the amounts that would be due to the budget of the European Union pursuant to a judgment of the Court of Justice**. It considers that it, therefore, has jurisdiction to examine an action brought against a decision of the Commission that determines the amount due from the Member State in terms of a penalty payment. The General Court states that, in exercising such jurisdiction, it cannot therefore impinge on the **exclusive jurisdiction reserved to the Court of Justice to examine a failure of a Member State to fulfil its obligations under European Union law**.

Then, with regard to the merits of the action, the General Court recalls that it follows from the 2008 judgment that it was incumbent on Portugal to repeal the national legislation at issue in order to comply with the 2004 judgment and that the penalty payment would be due until the date of that repeal. **That legislation was repealed by Law 67/2007, which came into force on 30 January 2008**. However, the Commission refused to accept that the infringement had ended on that date but considered that the date on which the infringement had ended was 18 July 2008, the date when Law 31/2008 came into force. The General Court finds that **the Commission thus failed to take into account the operative part of the 2008 judgment** and, accordingly, it annuls the decision of the Commission.

Finally, the General Court rejects the contention of the Commission that the latter had the obligation to check whether the system of rules established following the adoption of Law 67/2007 constituted an adequate transposition of European Union law. Such an appraisal, firstly, falls within the exclusive jurisdiction of the Court of Justice and, secondly, goes beyond a review to determine whether or not the national legislation has been effectively repealed. Consequently, the General Court finds that **the Commission was not entitled to decide**, in the context of the enforcement of the 2008 judgment, **that Law 67/2007 did not comply with European Union law and then draw conclusions from this for the calculation of the penalty payment determined** by the Court of Justice. **In so far as it considered that the system of rules introduced by that law did not constitute a correct transposition of European Union law, the Commission should have initiated new infringement proceedings**.

NOTE: An appeal, limited to points of law only, may be brought before the Court of Justice against the decision of the General Court within two months of notification of the decision.

NOTE: An action for annulment seeks the annulment of acts of the institutions of the European Union that are contrary to European Union law. The Member States, the European institutions and individuals may, under certain conditions, bring an action for annulment before the Court of Justice or the General Court. If the action is well founded, the act is annulled. The institution concerned must fill any legal vacuum created by the annulment of the act.

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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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