



Press and Information

Court of Justice of the European Union
PRESS RELEASE No 162/12
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Judgment in Case C-610/10
Commission v Spain

On account of failure to comply with a judgment of the Court, Spain is ordered to pay a lump sum of €20 million and a daily penalty payment of €50 000 from today until that judgment is complied with

The judgment which was not complied with held that Spain had failed to fulfil its obligation to recover unlawful aid paid to the undertaking Indosa

The Spanish group Magefesa, which manufactures domestic articles of stainless steel, and small electric appliances, consists of four industrial companies: Indosa (Basque Country), MIGSA (Andalucía), Cunosa and GURSA (Cantabria). Owing to economic difficulties encountered by the group, the Spanish central Government, and several autonomous regional governments, granted it aid in the form of loan guarantees, a loan at other than market conditions, non-repayable subsidies and an interest subsidy.

By decision¹ of 20 December 1989, the Commission declared that aid to be unlawful and incompatible with the common market and called upon the Spanish authorities recover it. On the view that Spain had failed to adopt, within the prescribed period, the measures necessary to comply with that decision, the Commission brought an action before the Court of Justice. By judgment² of 2 July 2002, the Court held that Spain had failed to fulfil its obligation to adopt the measures necessary to comply with the Commission's decision.

In the course of 2006, the Commission found that the judgment had been complied with as regards GURSA, MIGSA and Cunosa, but not as regards Indosa. The aid which Indosa had received had not been recovered, but its activities were being continued – in spite of the fact that it had been declared insolvent in 1994 – first by Indosa itself and then by the Compañía de Menaje Doméstico SA ('CMD'). CMD, a wholly-owned subsidiary of Indosa, was created by Indosa's insolvency administrator in order to market the company's products, Indosa's assets and staff having been transferred to CMD. After CMD was declared insolvent in 2008, some of its former employees created the undertaking Euskomenaje, which continued the subsidised activities in CMD's premises and was authorised to use CMD's assets free of charge until the CMD liquidation procedure was concluded. In 2010, against that background, the Commission claimed that the Court of Justice should declare that Spain had failed to fulfil its obligations by not complying with the first judgment of the Court delivered in 2002.

By a second judgment delivered today, **the Court holds that Spain has failed to fulfil its obligation to comply with the first judgment, according to which it was required to adopt the measures necessary to comply with the decision of the Commission of 1989, which placed it under an obligation to recover the unlawful aid granted to Indosa.**

First of all, the Court refers to its case-law according to which the fact that an undertaking is in difficulty or insolvent does not affect the obligation to recover aid unlawfully paid. In the context of insolvency proceedings, the elimination of the distortion of competition brought about by that aid

¹ Commission Decision 91/1/EEC of 20 December 1989 concerning aid in Spain which the central and several autonomous governments have granted to Magefesa, producer of domestic articles of stainless steel, and small electric appliances (OJ 1991 L 5, p. 18).

² Case C-499/99 *Commission v Spain*.

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, in the case of CMD – from which the aid should have been recovered – such a liability had not been registered in the schedule of liabilities in the insolvency proceedings before the expiry of the period prescribed by the Commission (22 May 2010). It was not until after that deadline, between December 2010 and December 2011, that the Autonomous Community of the Basque Country submitted a series of applications – in relation to an amount which was successively increased – requesting the registration of a claim in its favour against CMD³.

Next, the Court points out that, in the present case, such registration is not in itself sufficient to meet the obligation to comply with the 2002 judgment. Registration is sufficient to satisfy that obligation only if, where the authorities are unable to recover the full amount of the unlawful aid, the insolvency proceedings result in the definitive cessation of the activities of the undertaking which received the aid. The purpose underlying recovery of aid declared incompatible with the common market is to remove the distortion of competition caused by the competitive advantage which the recipient of the aid has enjoyed in the market as compared with its competitors, thereby restoring the situation which existed before the aid was paid. The pursuit of the activities of an insolvent undertaking by other undertakings may, where the aid concerned is not recovered in its entirety, prolong the distortion of competition brought about by the aid. That is inter alia the case where that company acquires the assets of the company in liquidation without paying the market price in return or where the effect of that company's creation is circumvention of the obligation to repay the aid. In that regard, the Court considers that a number of items of evidence show that Euskomenaje derives a competitive advantage from the aid. The developments which took place in the CMD insolvency proceedings suggest that the objective of those developments was to ensure that the subsidised activities continued, even though the unlawful aid in question had not been recovered.

Consequently, the Court holds that the failure to fulfil obligations of which Spain stands criticised continued up until the Court's examination of the facts. In those circumstances, the Court considers that an order imposing a penalty payment on Spain is an appropriate financial means by which to encourage it to take the necessary measures to put an end to the infringement. Accordingly, **the Court orders Spain to pay, as from today, a penalty payment of €50 000 for each day of delay in adopting the measures necessary to comply with the 2002 judgment.**

Furthermore, **the Court orders Spain to pay a lump sum of €20 million.** The Court considers that all the circumstances of this case indicate that, if the future repetition of similar infringements of EU law is to be effectively prevented, such a dissuasive measure must be adopted. The amount has been determined in a manner that is appropriate to the circumstances and proportionate both to the breach that has been established and to Spain's ability to pay. In that regard, the Court stresses the duration and the seriousness of the failure to fulfil obligations. First, the failure to fulfil obligations has persisted for more than 10 years since the date of delivery of the Court's first judgment and for more than 20 years since the adoption of the Commission's decision. Although Spain has very recently taken a series of steps which reflect a genuine wish to put an end to the failure to fulfil obligations in question, those steps were taken only a short time before the date on which the case was brought before the Court and, for the most part, after that date. For many years, therefore, Spain did not make the required effort. Secondly, compliance with the 2002 judgment should not have met with major difficulties, given that the recipients of the unlawful aid in question were few in number; they were identified by name; and the sums to be recovered were specified.

The financial penalties imposed by the present judgment must be paid to the Commission, into the 'European Union own resources' account.

³ That liability was finally registered in the schedule of liabilities following an order of 4 April 2012 of the Juzgado de lo Mercantil No 2 of Bilbao.

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