



Press and Information

Court of Justice of the European Union

**PRESS RELEASE No 71/14**

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Judgment in Case C-184/11  
Commission v Spain

## **Spain is ordered to pay a lump sum of €30 million for having failed to comply with a judgment finding a failure to fulfil obligations**

*Spain failed to adopt all the measures necessary to recover unlawful State aid granted to undertakings by the provinces of the Basque Country*

In the 1990's, the three provinces of the Basque Country (Álava, Vizcaya and Guipúzcoa) granted State aid to certain undertakings in the form of a reduction in the tax base and a 45% tax credit for investments. By six decisions of 11 July 2001<sup>1</sup>, the Commission declared that aid incompatible with the internal market. It then ordered Spain to withdraw those aid schemes and to take all necessary measures to recover the aid from the recipients. Finding that not all the aid had been recovered, in 2003 the Commission brought actions for failure to fulfil obligations before the Court of Justice. By judgment of 14 December 2006<sup>2</sup>, the Court held that Spain had failed to fulfil its obligation to adopt all the measures necessary to comply with the Commission decisions.

Since it considered that Spain had not fully complied with the 2006 judgment, in 2011 the Commission decided to bring a new action for failure to fulfil obligations. The Commission was of the view that the amounts not yet recovered when the action was brought represented approximately 87% of the total of the unlawful aid to be recovered. Subsequently, the Commission found that Spain had fully complied with the 2006 judgment during the proceedings before the Court, so it withdrew its application for an order for a periodic penalty payment while maintaining its application for an order for payment of a lump sum, the amount of which, in its view, should be set at approximately €65 million<sup>3</sup>.

In today's judgment, the Court considers that Spain has not correctly complied with the 2006 judgment. The Court noted that from 27 August 2008 (the date on which the period prescribed by the Commission in a reasoned opinion sent to Spain for it to comply with the 2006 judgment expired), the unlawful aid had not been recovered in full by the Spanish authorities, by their own admission.

In response to an argument put forward by Spain, the Court considers that it is not for it to state, for each of the six 2001 decisions, what sums have not yet been recovered. Spain must ascertain the individual situation of each undertaking concerned and calculate the exact amount of aid to be recovered under the contested decisions.

Taking into account the circumstances of the present case, the Court considers it justified to order Spain to pay a lump sum fine. The Court points out that the recovery procedure of the unlawful aid lasted for over five years following the delivery of the 2006 judgment and that that had no connection with difficulties in recovering the aid. In addition, the unlawful aid was particularly harmful to competition by reason of the size of the amount thereof and the high number of recipients, such that the latter ought to have been rapidly deprived of the advantage which they unlawfully enjoyed over their competitors. Finally, the Court points out that Spain has already been subject to a number of judgments finding failure to fulfil obligations for its failure immediately and

<sup>1</sup> Decisions 2002/820/EC (OJ 2002 L 296, p. 1); 2002/892/EC (OJ 2002 L 314, p. 1); 2003/27/EC (OJ 2003 L 17, p. 1); 2002/806/EC (OJ 2002 L 279, p. 35); 2002/894/EC (OJ 2002 L 314, p. 26) and 2002/540/EC (OJ 2002 L 174, p. 31).

<sup>2</sup> Joined Cases [C-485/03 to C-490/03](#) *Commission v Spain*.

<sup>3</sup> See also, for the Opinion of the Advocate General, Press Release [No 8/14](#).

effectively to recover unlawful aid<sup>4</sup>. In the view of the Court, such repeated infringements by a Member State require the adoption of a dissuasive measure, such as an order for payment of a lump sum.

Considering that the restriction of the infringement to a single autonomous region cannot attenuate the seriousness of the failure to fulfil obligations established, the Court considers it justified, having regard to Spain's capacity to pay, to order that Member State to pay a lump sum of €30 million.

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**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: Christopher Fretwell ☎ (+352) 4303 3355

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<sup>4</sup> Inter alia, the *Commission v Spain* judgments in Cases [C-499/99](#), [C-404/00](#), [C-177/06](#) and [C-529/09](#).