



Press and Information

Court of Justice of the European Union

PRESS RELEASE No 89/14

Luxembourg, 25 June 2014

Judgment in Case C-76/13
Commission v Portugal

Portugal is ordered to pay a lump sum of €3 million and a penalty payment of €10 000 for every day of delay in complying with an earlier Court judgment

The Court has reduced the amount proposed by the Commission, having regard to, inter alia, the fact that Portugal's ability to pay has been reduced as a result of the financial crisis

The company Portugal Telecom (PTC) is the largest telecommunications operator in Portugal. It operates in numerous other countries too, especially Portuguese-speaking ones (in Brazil, it runs the biggest mobile network in the southern hemisphere). In 1995 the Portuguese Government granted it the exclusive right to operate the public telecommunications service. In principle, it was granted that right until that activity was liberalised in accordance with EU law.

The 'Universal Service Directive',¹ adopted in 2002, provides that every Member State is to designate the undertakings that are to provide the universal service while observing the principles of objectivity, transparency, non-discrimination and proportionality. That directive was to be transposed by the Member States by 24 July 2003.

In 2005 the Commission initiated the pre-litigation procedure against Portugal on the grounds that PTC had, after 2003, continued to be the exclusive provider of the universal service and that it had not been designated in accordance with the procedure laid down by the directive. In 2009 the Commission brought infringement proceedings against Portugal before the Court of Justice. By judgment of 7 October 2010,² the Court held that, so far as concerned the designation of the universal service provider, Portugal had failed to transpose correctly the provisions of the directive and to ensure that those provisions were in practice applied.

After ordering Portugal to fulfil, by 7 June 2011, its obligations under the judgment of 2010, the Commission, taking the view that the judgment had not yet been complied with, decided in 2013 to bring fresh infringement proceedings. In essence, the Commission considered that the concession contract concluded with PTC is still in force and that the undertakings responsible for providing the universal service have still not been designated by means of a procedure consistent with EU law. In this respect, it emphasised that it was not until the month of October 2012 that Portugal launched the competitive tendering procedure for the selection of the universal service providers, while the new legislation to repeal the legislation incompatible with EU law will not enter into force until 1 June 2014. In addition, termination of the contract concluded with PTC is not provided for before 2025. The Commission claimed that Portugal should be ordered to make a penalty payment of €43 500 for every day of delay in complying with the judgment of 2010 and to pay a fixed-rate sum of €5 000 for every day from the date of delivery of the judgment of 2010 until the date of Portugal's compliance with that judgment or the date on which the Court delivers judgment in the new infringement proceedings.

In today's judgment, the Court considers that **Portugal has failed to take the measures entailed by compliance with the judgment of 2010**. It observes that as at 7 June 2011, the concession contract concluded with PTS was still in force and that the new legislation to repeal the provisions

¹ Directive 2002/22/CE of the European Parliament and of the Council of 7 March 2002 on universal service and users' rights relating to electronic communications networks and services (Universal Service Directive) (OJ 2002 L 108, p. 51).

² Case [C-154/09](#) *Commission v Portugal*

incompatible with EU law will not enter into force until 1 June 2014. Furthermore, the Court has found that Portugal had not, as at 7 June 2011, designated by means of a procedure consistent with the directive the undertakings responsible for providing the universal service.

In the light of the circumstances of the case, **the Court has considered it appropriate to order Portugal to pay a lump sum and to make a penalty payment.**

With regard to the lump sum, the Court observed that **the failure to comply with the judgment of 2010 has prejudiced private and public interests.** In addition, it emphasised that the concession contract under which PTC was to be the provider of the universal service until 2025 **was approved** on 17 February 2003, **after the directive had entered into force**, and that the Member States were required to transpose that directive into national law by 24 July 2003 at the latest. The Court has found that **these matters make it necessary to adopt a deterrent measure**, such as an order to pay a lump sum.

The Court noted that **the duration of the infringement** (that is to say, nearly three and a half years, including 28 months' delay in complying with the judgment) **is excessive.** In addition, it considered that **this was a serious infringement**, for (1) **the failure to transpose was an obstacle to the proper functioning of the internal market** and (2) **the failure to comply with the judgment of 2010 had adverse consequences for both private interests** (namely, those of undertakings that could possibly be interested in providing the universal service) **and public interests** (namely, those of end users). The Court indicated that it was, **however**, necessary to take into account that, as regards the designation of the undertakings responsible for the provision of the universal service, **tendering procedures consistent with EU law were launched in October 2012.** It observed that the new contracts designating those undertakings and the final repeal of the legislation authorising the maintenance of PTC's exclusive rights contract are to take effect on 1 June 2014. Lastly, the Court states that **Portugal's ability to pay has been reduced in the context of the economic crisis.**

Furthermore, the Court considered that **a penalty payment constitutes an appropriate financial means of ensuring full compliance with the judgment concerned. Nevertheless, it took the view that to impose the sum proposed by the Commission would not be proportionate, inasmuch as the latter had not taken due account of the fact that Portugal had put in hand the measures necessary in order to perform a significant part of its obligations.**

In the light of those considerations, the Court found that it was proportionate to order Portugal to pay a lump sum of €3 million and also to make a penalty payment of €10 000 for every day of delay in implementing the measures necessary in order to comply with the judgment of 2010.

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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