



Press and Information

Court of Justice of the European Union

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Judgment in Case C-557/14  
Commission v Portugal

**For having delayed in implementing the Urban Waste Water Directive, Portugal is ordered to pay a lump sum payment of € 3 000 000 and a penalty payment of € 8 000 per day of delay**

*The Court had already established an infringement by Portugal in a judgment of 2009*

An EU directive<sup>1</sup> aims to protect the environment from the adverse effects of the discharge of urban waste water (domestic and industrial waste water). It provides, inter alia, that Member States are to ensure that all agglomerations with a population equivalent<sup>2</sup> of more than 15 000 are equipped with urban waste water collecting systems by 31 December 2000 at the latest. In addition, the urban waste water from those agglomerations must, before discharge, be subject to secondary treatment or an equivalent treatment.<sup>3</sup>

Finding that several Portuguese agglomerations with a population equivalent of more than 15 000 were not equipped with urban waste water collecting systems, nor were they equipped with urban waste water treatment systems, in 2007 the Commission brought an action for failure to fulfil obligations against Portugal before the Court of Justice. In its judgment of 7 May 2009,<sup>4</sup> the Court found that Portugal had failed to fulfil its obligations, since 22 agglomerations were not yet equipped with urban waste water collecting and/or treatment systems.

Considering that Portugal had still not complied with the judgment of 2009 in two of the 22 agglomerations concerned (namely the agglomerations of Vila Real de Santo António and Matosinhos), in 2014 the Commission decided to bring a further action for failure to fulfil obligations against Portugal. In that context, the Commission claims that the Court should order Portugal to pay it a penalty payment of € 20 196 per day of delay in complying with the judgment of 2009, together with a lump sum payment of € 2 244 per day from the date of delivery of the judgment of 2009 until the day on which that judgment is complied with in full.

Portugal contends, generally, that the judgment of 2009 has been complied with to a very large extent. Regarding the agglomeration of Vila Real de Santo António, the final works were completed on 11 April 2015. Concerning the agglomeration of Matosinhos, Portugal maintains, first, that the existing primary treatment is sufficient to guarantee the quality of the water and avoid risks to the environment and to human health, and, second, that although measures have been taken in order to comply with the provisions of the directive, funding difficulties have hindered construction of the treatment plant.

By today's judgment, **the Court finds that Portugal has failed to comply with the judgment of 2009, in so far as**, on the day of expiry of the period prescribed by the Commission for complying with that judgment (21 April 2014), **the two agglomerations at issue were not yet equipped with urban waste water treatment systems**. Indeed, in those two agglomerations, the necessary

<sup>1</sup> Council Directive 91/271/EEC 21 May 1991 concerning urban waste-water treatment (OJ 1991 L 135, p. 40).

<sup>2</sup> One 'population equivalent' unit corresponds to the average amount of pollution produced each day by one inhabitant.

<sup>3</sup> According to the directive, 'secondary treatment' means treatment of urban waste water by a process generally involving biological treatment with a secondary settlement or other process in which the requirements relating to the biochemical oxygen demand without nitrification, the chemical oxygen demand, and the total suspended solids are respected.

<sup>4</sup> Case [C-530/07](#) Commission v Portugal.

works had either not been completed (agglomeration of Vila Real de Santo António) or had not even been started (agglomeration of Matosinhos).

In order to ensure that the judgment of 2009 is complied with in full, the Court decides to impose **financial penalties** on Portugal in the form of a penalty payment and a lump sum payment.

Regarding the **penalty payment**, the Court considers that the lack or shortage of urban waste water treatment systems is likely to harm the environment and must be regarded as particularly serious. In addition, the particularly lengthy character of the infringement is regarded by the Court as another aggravating circumstance: according to Portugal's statements, the judgment of 2009 will not be complied with in full until 2019, which is equivalent to a delay of almost 20 years (the obligation to ensure that the secondary treatment of the urban waste water complied with EU law should have been fulfilled on 31 December 2000 at the latest). However, in view of the fact that, on the date of the hearing before the Court, only the agglomeration of Matosinhos had still not been brought into line with EU law, the harm to the environment is less extensive than the harm established in 2009.

For the purposes of calculating the penalty payment, the Court finds that the duration of the infringement imputed to Portugal is considerable, namely over seven years from the date of delivery of the judgment of 2009. Lastly, the Court takes account of Portugal's reduced ability to pay, as the gross domestic product of that country has decreased in the meantime. Furthermore, the Court observes that Portugal claims to be unable, so far as the agglomeration of Matosinhos is concerned, to reduce the threat to the environment. For all those reasons, the Court considers it appropriate to impose a fixed penalty payment of € 8 000 per day on Portugal, from today until the judgment of 7 May 2009 has been complied with in full.

As regards the order to pay a **lump sum**, which must take account of the characteristics of the established infringement and the attitude of the Member State concerned, the Court considers it appropriate to order Portugal to pay an amount of € 3 000 000. Recalling that other **judgments have already established Portugal's failure to fulfil its obligations concerning the treatment of urban waste water**,<sup>5</sup> the Court indicates that effective prevention of future repetition of similar infringements of EU law may require the adoption of a dissuasive measure, such as an order to make a lump sum payment. **That repetition of unlawful conduct is all the more unacceptable where it takes place in a sector in which the effects on human health and the environment are particularly significant.** The Court adds that, although Portugal has co-operated systematically with the Commission's staff, it has not complied with its own timetables concerning the treatment plant for the urban waste water of the agglomeration of Matosinhos, since **the necessary plant will not be operational until 2019.**

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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 EU 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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<sup>5</sup> Case [C-233/07](#) Commission v Portugal, Case [C-220/10](#) Commission v Portugal and Case [C-398/14](#) Commission v Portugal.