



Press and Information

Court of Justice of the European Union

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Judgment in Case C-122/18
Commission v Italy

Italy should have ensured that its public authorities complied, in their commercial transactions with private undertakings, with periods for payment not exceeding 30 or 60 days

In the judgment in *Commission v Italy* (Directive combating late payment) (C-122/18), delivered on 28 January 2020, the Grand Chamber of the Court **held that Italy had infringed** Directive 2011/7 on combating **late payment in commercial transactions**¹, in that that Member State **had not ensured that its public authorities, when they were debtors in such transactions, effectively complied with periods for payment not exceeding 30 or 60 calendar days**, as laid down in Article 4(3) and (4) of that directive.

The Commission, having received a series of complaints from Italian economic operators and associations of economic operators which denounced the excessively long periods in which Italian public authorities systematically pay their invoices pertaining to commercial transactions with private operators, brought an action against Italy before the Court for failure to fulfil its obligations.

Italy argued, in defence, that Directive 2011/7 requires Member States only to guarantee, in their legislation transposing that directive and in contracts governing commercial transactions in which the debtor is one of their public authorities, maximum periods for payment in conformity with Article 4(3) and (4) of that directive and to provide for the right of creditors, in the event of non-compliance with those periods, to late payment interest and compensation for recovery costs. According to that Member State, those provisions do not, however, require Member States to guarantee effective compliance with those periods by their public authorities in all circumstances.

The Court, first of all, rejected that argument, taking the view that Article 4(3) and (4) of Directive 2011/7 also requires Member States to ensure effective compliance, by their public authorities, with the periods for payment it prescribes. It *Inter alia* noted that, in the light of the large number of **commercial transactions in which public authorities are the debtors of undertakings** and the costs and difficulties created for undertakings by **those authorities' late payments**, the EU legislature intended to impose increased obligations on Member States as regards transactions between undertakings and public authorities.

Next, the Court rejected the argument of Italy according to which public authorities cannot engage the liability of the Member State to which they belong when acting in a commercial transaction (*jure privatorum*) outside their public powers. Such an interpretation would render ineffective Directive 2011/7, in particular Article 4(3) and (4) thereof, which specifically **places Member States under the obligation to ensure effective compliance with the periods for payment prescribed therein in commercial transactions where the debtor is a public authority**.

Last, the Court emphasised that the fact – assuming it were established – that the situation involving the public authorities' late payments in commercial transactions covered by Directive 2011/7 was improving could not prevent the Court from holding that the Italian Republic had failed

¹ Directive 2011/7/EU of the European Parliament and of the Council of 16 February 2011 on combating late payment in commercial transactions (OJ 2011 L 48, p. 1).

to fulfil its obligations under EU law. In accordance with settled case-law, the question whether a Member State has failed to fulfil its obligations must be determined by reference to **the situation prevailing in the Member State at the end of the period laid down in the reasoned opinion, namely, in the case at hand, on 16 April 2017.**

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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