



PRESS RELEASE No 47/23

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Judgment of the Court in Case C-174/21 | Commission v Bulgaria (Twofold failure to fulfil obligations – PM10 pollution)

The Commission's first action for a twofold failure to fulfil obligations in relation to air pollution is inadmissible

In the letter of formal notice sent to Bulgaria at the end of 2018, the Commission neither alleged nor established with sufficient clarity that the Court's 2017 judgment establishing the first failure to fulfil obligations had still not been complied with in the intervening period

The Ambient Air Quality Directive ¹ requires Member States to comply with concentration limit values for certain atmospheric pollutants in ambient air and requires Member States, in the event of exceedance, to adopt air quality plans so that the exceedance period is kept as short as possible.

In the judgment in *Commission v Bulgaria*, ² delivered on 5 April 2017, the Court held that Bulgaria had failed to fulfil the abovementioned obligations. ³

Following the delivery of the judgment in *Commission v Bulgaria*, the Commission, on 9 November 2018, sent Bulgaria a letter of formal notice, in accordance with the procedure laid down in Article 260(1) and (2) TFEU. ⁴ In that letter, the Commission found that Bulgaria had still not taken the necessary measures to put an end to the infringements established by the Court in its 2017 judgment. It then invited that Member State to submit its observations by the end of the period prescribed in the letter ('the reference date'), namely 9 February 2019, and to inform it of any progress made in the meantime.

Since it was not satisfied with Bulgaria's replies, the Commission brought an action for failure to fulfil obligations before the Court under Article 260(2) TFEU (the 'action for twofold failure to fulfil obligations') seeking a declaration that that Member State has failed to comply with that judgment and an order requiring it to pay a lump sum and a daily penalty payment until the judgment of the Court has been complied with in full.

Findings of the Court

By its judgment, the Court considers that in order for a letter of formal notice to be issued in a pre-litigation

¹Directive 2008/50/EC of the European Parliament and of the Council of 21 May 2008 on ambient air quality and cleaner air for Europe (OJ 2008 L 152, p. 1)

²Judgment of 5 April 2017, *Commission v Bulgaria* (C-488/15).

³More specifically, the obligations arising from Article 13(1) and the second subparagraph of Article 23(1), of Directive 2008/50, and Annex XI to that directive.

⁴Under Article 260(1) and (2) TFEU, a Member State in respect of which the Court has found that it has failed to fulfil an obligation under the Treaties is required to take the necessary measures to comply with the judgment of the Court, and the Commission may bring the matter before the Court if it considers, after giving the Member State concerned the opportunity to submit its observations, that such measures have not been taken.

procedure pursuant to Article 260(2) TFEU, if the requirements of legal certainty are not to be infringed, a failure to fulfil the obligation to take the necessary measures to comply with the judgment of the Court must be capable of being legitimately alleged by the Commission. Given the fact that the action for twofold failure to fulfil obligations is aimed at inducing a defaulting Member State to comply with a judgment establishing a failure to fulfil obligations, **the Court states the Commission is required not only to ascertain, throughout the pre-litigation procedure and before issuing the letter of formal notice, whether or not the judgment in question has been complied with in the meantime, but also to allege and establish, prima facie, with clarity, in that letter of formal notice, that the judgment remains to be complied with on the reference date.** A Member State cannot legitimately be accused of having failed to fulfil its obligation to take the necessary measures to comply with a judgment of the Court if it is not clear from the letter of formal notice that, on the reference date, the obligation to comply with that judgment has continued to exist since its delivery.

In the present case, the Court notes that, in the letter of formal notice of 9 November 2018, **the Commission did not, with the requisite clarity, allege or establish, prima facie, that the judgment of 5 April 2017, *Commission v Bulgaria*, still had to be complied with on the reference date, namely 9 February 2019.**

In that letter, the Commission states that the failures to fulfil obligations established up to 2014 in that judgment continued, in respect of the zones and agglomerations referred to in that letter, in 2015 and 2016. It does not, however, provide detailed explanations or factual analysis indicating that the situation identified during those two years continued without any significant improvement during the period between the delivery of the judgment on 5 April 2017 and the reference date, 9 February 2019, thus making it necessary to take measures to comply with that judgment.

According to the Court, neither the fact that those failures to fulfil obligations continued between the end of the period covered by the Court's judgment, namely 2014, and a subsequent period, which nevertheless preceded the date of delivery of the judgment, namely 2015 and 2016, nor the systematic and persistent nature of those failures to fulfil obligations established by the Court in that judgment automatically mean that, both on the date of its delivery and on the reference date, that judgment still had to be complied with and that Bulgaria could therefore be criticised for not having taken all the measures necessary to comply with it.

Therefore, by failing, in the letter of formal notice, to allege and establish, prima facie, with the requisite clarity, the essential prerequisite that the judgment of 5 April 2017, *Commission v Bulgaria*, still had to be complied with on the reference date as regards the zones and agglomerations referred to in that letter, the Commission did not legitimately allege that Bulgaria failed to fulfil its obligation to take the necessary measures to comply with that judgment. **The Court concludes that the Commission's action for twofold failure to fulfil obligations is inadmissible.**

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.

Unofficial document for media use, not binding on the Court of Justice.

The [full text](#) of the judgment is published on the CURIA website on the day of delivery.

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