



Press and Information

Court of Justice of the European Union  
**PRESS RELEASE No 103/15**  
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Judgment in Case C-367/14  
Commission v Italy

## **Due to its delay in recovering aid incompatible with the common market, Italy is ordered to pay a lump sum of €30 million and a fine of €12 million per semester of delay**

*The Court had already made an initial ruling that Italy had failed to fulfil its obligations in a 2011 judgment*

By decision of 25 November 1999,<sup>1</sup> the Commission took the view that the reductions in and/or relief from social security contributions granted between 1995 and 1997 to certain firms in the island region of Venice and Chioggia constituted State aid incompatible with the common market. Those reductions amounted on average to €37.7 million per annum shared between 1 645 firms, while the relief amounted to €292 831 per annum shared between 165 firms. The Commission thus required Italy to recover the aid from the recipients.

In 2000, 59 actions were brought before the General Court against that decision. Of all those actions, the General Court declared 28 inadmissible while four actions were chosen as test cases and held to be unfounded in 2008.<sup>2</sup> Seised of an appeal, the Court of Justice upheld the judgment of the General Court in 2011.<sup>3</sup> The other actions brought against the Commission decision were also dismissed by the General Court and the Court of Justice.

In parallel with those actions, in 2009 the Commission brought an action for failure to fulfil obligations against Italy, alleging that it had failed to adopt, within the period prescribed, all the measures necessary to recover the aid. In a 2011 judgment,<sup>4</sup> the Court of Justice held that Italy had not fulfilled its obligation to recover the aid under the Commission decision.

Finding that, despite the judgment that Italy had failed to fulfil its obligations delivered by the Court of Justice in 2011, Italy has still not recovered all the aid and has even suspended the recovery of some of that aid, the Commission brought a fresh action for failure to fulfil obligations against Italy. In that second action, the Commission requests the Court of Justice to order Italy to pay a lump sum and a fine.

By today's judgment, the Court of Justice holds that **Italy has once again failed to fulfil its obligation to recover the aid**. On 21 January 2013 (expiry of the time-limit set in the letter of formal notice sent by the Commission to Italy), the aid had still not been recovered in full by the Italian authorities and the recovery procedure is still ongoing at the present time.

Furthermore, the Court finds that **the difficulties which have arisen in the aid recovery procedure do not justify the failure to execute the 2011 judgment**. First of all, with regard to the suspension of the recovery of certain aid by the Italian courts, the Court notes that Italy has failed to establish that the conditions for such a suspension were satisfied. Similarly, the difficulties due to the need to examine on a case-by-case basis having regard to the large number of

<sup>1</sup> Commission Decision 2000/394/EC of 25 November 1999 on aid to firms in Venice and Chioggia by way of relief from social security contributions under Laws Nos 30/1997 and 206/1995 (OJ 2000 L 150, p. 50).

<sup>2</sup> Cases: [T-245/00](#), [T-270/00](#) and [T-277/00](#) Hotel Cipriani and Others v Commission see Press Release No. [82/08](#).

<sup>3</sup> Cases: [C-71/09 P](#), [C-73/09 P](#) and [C-76/09 P](#) Comitato 'Venezia vuole vivere' and Others v Commission see Press Release No. [55/11](#).

<sup>4</sup> Case: [C-302/09](#) Commission v Italy

recipients over a period long ago in order to ascertain the sums to be recovered cannot justify the non-recovery of that aid: the Court considers, in fact, that Italy has not been able to establish that all the measures taken with a view to recovering the aid were subject to permanent and efficient monitoring, particularly as a Member State cannot rely on its own delay in executing its obligations to justify the non-execution of a judgment of the Court of Justice that that Member State has failed to fulfil its obligations. Finally, the Court recalls that the fact that certain firms are in difficulty or liquidation does not affect the obligation to recover the aid unlawfully paid, since Italy is bound, depending on the case, to bring about the liquidation of that company, to have its claim registered as one of that company's liabilities or to take any other measure enabling the aid to be recovered.

Having regard to the fact that a substantial portion of the aid remains outstanding since the 2011 judgment and that Italy has failed to justify the non-recovery, the Court considers that **the imposition of a fine** constitutes an appropriate financial means of encouraging Italy to take the measures necessary to bring an end to its failure to fulfil its obligations which has been found. The Court considers that the fine must be imposed on a six-monthly basis in order to enable the Commission to assess the progress of the recovery operations while giving Italy a certain time to gather and transmit the documents concerning the recovery. **The Court therefore considers it appropriate to set a fine of €12 million per semester of delay in the execution of the 2011 judgment.**

Finally, the Court considers that the effective prevention of future repetition of similar infringements of EU law requires the adoption of a dissuasive measure such as **the imposition of a lump sum payment**. Italy has, in fact, already been the subject of numerous judgments finding a failure to fulfil obligations for late recovery of unlawful aid incompatible with the internal market. Having regard to a fair assessment of the facts, **the Court sets the amount of the lump sum payment to be made by Italy at €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.

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