



Press and Information

Court of Justice of the European Union

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Judgment in Case C-388/16
Commission v Spain

Spain is ordered to pay a lump sum of €3 million because of its delay in liberalising the port cargo-handling services sector

The Court had already ruled for the first time, in a judgment delivered in 2014 that Spain had failed to fulfil its obligations

In a judgment of 11 December 2014,¹ the Court of Justice ruled that Spain had failed to fulfil its obligations under EU law and, more specifically, had infringed the principle of freedom of establishment. Spanish legislation in force at that time required undertakings from other Member States which wished to carry out cargo-handling activities in Spanish ports of general interest (i) to register with a public limited dockers' management company and, as the case may be, to hold shares in that company and (ii) to give priority in recruitment to workers provided by that company, including the employment of a minimum number of workers on permanent contracts.

As it took the view that, by a deadline of 20 September 2015, Spain had still not adopted the measures necessary to ensure compliance with the 2014 judgment, the Commission decided, in 2016, to bring a second action before the Court against Spain for failure to fulfil obligations and seeking the imposition of financial penalties.²

On 12 May 2017, Spain adopted, with effect from 14 May 2017, new legislation modifying the rules governing workers with regard to the provision of port cargo-handling services. The Commission took the view that, by so doing, Spain had, from that point, taken all the steps necessary to ensure compliance with the 2014 judgment. It therefore maintained its action as regards the payment of a lump sum and the amount thereof, but withdrew in part its action with regard to the penalty payment.

In today's judgment, the Court finds that **Spain had not, by the deadline set by the Commission, taken the measures necessary to ensure compliance with the 2014 judgment.**

The Court finds that, although Spain has demonstrated its good faith, in particular by cooperating closely with the Commission during the pre-litigation procedure, the **failure to fulfil obligations** alleged against it **continued for a significant length of time**, given that 29 months passed between the delivery of the 2014 judgment and the entry into force of the new rules bringing the national legislation into line with the operative part of that judgment. The Court also takes the view that the failure to fulfil obligations **must be regarded as a serious one**, inasmuch as it adversely affects freedom of establishment, which is one of the fundamental principles of the internal market.

¹ Case [C-576/13](#) Commission v Spain

² The Commission originally sought (1) a **penalty payment** of €134 107.2 for every day of delay, from the date on which the judgment in this case is delivered until the date of compliance with the 2014 judgment, and (2) payment of a **lump sum**, the amount of which was to be calculated by multiplying the amount of €27 522 by each day of delay from the day on which the 2014 judgment was delivered to the date on which judgment in the present case is delivered, or the date on which the measures necessary to ensure compliance with the 2014 judgment are adopted (in the event that those measures might be adopted at an earlier date).

In those circumstances, the Court considers it appropriate to order Spain to pay a **lump sum of €3 million** into the European Union budget.

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.

Press contact: Holly Gallagher ☎ (+352) 4303 3355

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