



Press and Information

Court of Justice of the European Union  
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Judgment in Case C-93/17  
Commission v Greece

**For failing to recover the State aid granted to Ellinika Nafigeia, Greece is ordered to pay a lump sum of €10 million and a periodic penalty payment of more than €7 million for every six months of delay**

*The Court had already established the failure of Greece to fulfil its obligations in a judgment in 2012*

Ellinika Nafigeia AE ('ENAE'), the owner of a Greek civil and military shipyard in Skaramagkas (Greece), is specialised in the construction of military vessels. After being put into liquidation, in 1985 ENAE was acquired by Elliniki Trapeza Viomichanikis Anaptixeos AE ('ETVA') a Greek bank owned by the Greek State. ENAE was privatised in 2001 and then acquired in 2005 by ThyssenKrupp AG. It became subject to the control of Abu Dhabi Mar LLC which, in 2009, repurchased 75.1% of the shares in ENAE held by ThyssenKrupp. Between 1996 and 2003, Greece had taken a number of measures in favour of ENAE (capital injections, guarantees and loans) which have been the subject of decisions of the Council and the Commission. In 2008, the Commission adopted a decision<sup>1</sup> according to which those measures were aid incompatible with the internal market and had to be recovered immediately only from the civil portion of ENAE's assets, since the aid had exclusively benefitted the civil activities of that undertaking.

Greece argued that the full recovery of the aid might lead to ENAE's insolvency and affect its military activities, jeopardising the essential interests of the security of the State. In order to avoid that possibility, the Commission, Greece and ENAE reached an agreement, according to which the 2008 Decision would be deemed to be correctly implemented, subject to compliance with a series of commitments given by ENAE and Greece. In the six months following the acceptance of the list of commitments by the Commission, Greece was to provide the Commission with evidence that those commitments had been complied with and was to notify the Commission each year of the progress of the recovery.

Taking the view that Greece had failed to fulfil its obligations under the 2008 Decision, the Commission brought an infringement action against that Member State in 2010 before the Court of Justice. By judgment of 28 June 2012<sup>2</sup>, the Court held that Greece had failed to fulfil its obligations.

In 2012, the Greek Parliament enacted a law by which the right of exclusive use of certain land granted to ENAE was withdrawn. In 2014, for reasons of national security, Greece passed another law by which any form of enforcement against ENAE's assets was suspended. In the course of that year, the Commission sent the Greek authorities a letter of formal notice granting a period of two months within which to comply with the judgement of 28 June 2012 establishing the failure to comply with the 2008 Decision. They responded by ascribing this to the obstructive attitude and complete lack of cooperation of ENAE. In December 2015, the Greek authorities sent ENAE a recovery order for €523 352 889.23 (approximately 80% of the amount to be recovered). In February 2017, those authorities brought enforcement proceedings against ENAE's civil assets, but no money was recovered on account of garnishee orders made by other creditors and the

<sup>1</sup> Commission Decision 2009/610/EC of 2 July 2008 on the measures C 16/04 (ex NN 29/04, CP 71/02 and CP 133/05) implemented by Greece in favour of Hellenic Shipyards SA (OJ 2009 L 225, p. 104); (IP/08/1078 of the Commission). Case: [T-391/08](#) and Case [C-246/12 P](#).

<sup>2</sup> Case: [C-485/10](#) Commission v Greece

financial situation of the undertaking. In 2017, taking the view that Greece had still failed to comply with the judgment of 2012, the Commission decided to bring a new action for failure to fulfil obligations against that Member State. In June 2017, the Greek authorities requested ENAE to pay the outstanding 20% of the amount of aid to be recovered (€ 95 098 200.99). The payment has not been made. In March 2018, the Monomeles Protodikeio Athinon (Court of First Instance (Single Judge) Athens, Greece) put ENAE into special management. In March 2018, the Greek authorities tried to present to ENAE's special administrator the debts of Greece relating to the restitution of the aid concerned. In June 2018, by means of a delivery protocol, ENAE relinquished possession of the land which had been granted to it for exclusive use.

By today's judgment, **the Court declares, first, that on the date of the expiry of the period prescribed by the Commission in its letter of formal notice of 2014 (that is 27 January 2015), Greece had failed to fulfil its obligation to take all the measures necessary to comply with the judgement of 2012 and, second, that the failure to fulfil obligations persisted until the examination of the facts by the Court.** Thus, the Court considers it necessary to impose **financial penalties** in the form of a six-monthly penalty payment imposed in order to ensure the compliance with the judgment of 2012 and to enable the Commission to determine the progress of the measures implementing the judgment of 2012 and a lump sum as a dissuasive measure.

As regards the seriousness of the infringement, the Court emphasises the fundamental nature of the provisions of the Treaty on State aid, the considerable amount of unrecovered aid and the fact that the market for ship building is cross border. The Court also finds Greece's unlawful conduct with regard to State aid to be repetitive<sup>3</sup>. The Court has taken into account the long duration of the infringement (6 years from the date of delivery of the judgement of 2012). In order to assess Greece's ability to pay, the Court has not taken into account the criterion of the number of votes that Member State has in the Council or the new system of double majority. It has taken into account Greece's Gross Domestic Product (GDP) as a predominant factor and the extent of the economic crisis suffered by Greece (decrease of more than 25% in its GDP between 2010 and 2016).

In that context, the Court order Greece to pay to the EU budget **a lump sum of €10 million and a penalty payment of €7 294 000 for each six months of delay in taking the measures necessary to comply with the 2012 judgment** from the date of delivery of the present judgment and until the 2012 judgment has been complied with in full.

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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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<sup>3</sup> Greece was held to have failed to fulfil its obligations, first, in actions under Article 108(2) TFEU for failure to implement decisions ordering the recovery of State aid in the cases which gave rise to the judgments of 1 March 2012, Cases: [C-354/10 Commission v Greece](#), [C-263/12 Commission v Greece](#), [C-481/16 Commission v Greece](#) and [C-363/16 Commission v Greece](#), second, in an action under Article 228(2) [C-369/07 Commission v Greece](#).