



Press and Information

Court of Justice of the European Union

**PRESS RELEASE No 43/19**

Luxembourg, 28 March 2019

Advocate General's Opinion in Case C-569/17  
European Commission v Kingdom of Spain

---

**Advocate General Tanchev: The Court of Justice should find that Spain failed to adopt the necessary laws to comply with the directive on credit agreements for consumers relating to residential immovable property**

*Spain should be condemned to pay a daily penalty payment of about €106,000 until it complies with the directive*

The Commission has brought infringement proceedings against Spain for failing to adopt the necessary measures to transpose, by 21 March 2016, the directive on credit agreements for consumers relating to residential immovable property<sup>1</sup>. The Commission also asks the Court to impose a daily penalty payment of €105,991.60 on Spain, starting on the date of delivery of the Court's judgment establishing the infringement, for failing to fulfil its obligation to notify measures transposing the directive.

This case provides the Court with the opportunity to give a ruling, for the first time, on Article 260(3) TFEU, introduced by the Lisbon Treaty, which allows the Commission to bring infringement proceedings before the Court on the grounds that a Member State has 'failed to fulfil its obligations to notify measures transposing a directive adopted under a legislative procedure' and ask the Court to impose financial penalties on that Member State at the same time.

In today's Opinion, **Advocate General Evgeni Tanchev proposes that the Court should rule that Spain has failed to fulfil its notification obligations and that accordingly, a daily financial penalty should be imposed. He also advances a broad interpretation of a Member State's 'failure to notify' transposition measures under Article 260(3) TFEU, as including incomplete or incorrect transposition.**

The Advocate General notes that Spain does not contest that it failed to fulfil its obligations to adopt the necessary measures to transpose that directive into its internal law and to notify those measures to the Commission. He therefore proposes that the Court rule that the Commission's first head of claim is well founded.

The Advocate General then examines the meaning of a Member State's 'failure to notify' within the meaning of Article 260(3) TFEU. Following a literal, historical, purposive and contextual analysis of that provision, the Advocate General concludes that Article 260(3) TFEU should be interpreted as including a Member State's failure to fulfil a 'substantive' obligation to transpose. It thus includes a Member State's total failure to notify any transposition measures as well as a Member State's notification of measures which constitute an incomplete or incorrect transposition of the directive in question.

The Advocate General proceeds to analyse the assessment of financial penalties under Article 260(3) TFEU. More particularly, the Advocate General proposes that the Commission should be entitled to use the same method to calculate the financial penalties that it proposes under similar provisions of the TFEU. He also considers that the Court may impose both a lump sum and a

---

<sup>1</sup> Directive 2014/17/EU of the European Parliament and of the Council of 4 February 2014 on credit agreements for consumers relating to residential immovable property and amending Directives 2008/48/EC and 2013/36/EU and Regulation (EU) No 1093/2010 (the so-called Mortgage Credit Directive)

penalty payment or a financial penalty not suggested by the Commission on the basis of Article 260(3) TFEU, subject to the ceiling on the amount of the financial penalty set out in that provision. In his view, that ceiling concerns only the amount of the financial penalty and does not restrict the Court's discretion as to the type of financial penalty to be imposed.

With regard to the present proceedings, the Advocate General considers that the imposition of a penalty payment is appropriate as a persuasive measure and that Spain's arguments that it is disproportionate should be rejected. He also recommends that the Court use as the starting date for the duration of the infringement the reference date set out in the reasoned opinion. In view of the ceiling set out in Article 260(3) TFEU, the Advocate General proposes that the Court should impose a daily penalty payment up to the full amount specified by the Commission.

---

**NOTE:** The Advocate General's Opinion is not binding on the Court of Justice. It is the role of the Advocates General to propose to the Court, in complete independence, a legal solution to the cases for which they are responsible. The Judges of the Court are now beginning their deliberations in this case. Judgment will be given at a later date.

**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 Opinion is published on the CURIA website on the day of delivery.*

*Press contact: Jacques René Zammit ☎ (+352) 4303 3355*