



Press and Information

Court of Justice of the European Union

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Judgment in Case C-543/17  
Commission v Belgium

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**The Court interprets and applies for the first time Article 260(3) TFEU, which permits the imposition of a financial penalty for failure to fulfil the ‘obligation to notify measures transposing’ an EU directive**

*The Court orders Belgium to pay a penalty payment of €5,000 per day for not fully transposing the directive on high-speed electronic communications networks and, a fortiori, for failure to notify the relevant transposing measures to the Commission*

In 2014, the European Parliament and the Council adopted an EU directive which aims to facilitate and to encourage the roll-out of high-speed electronic communications networks.<sup>1</sup> The directive establishes minimum requirements relating to civil engineering works and physical infrastructure. The Member States had to transpose the directive into their national law by 1 January 2016 at the latest.

On 15 September 2017 the Commission brought an action for failure to fulfil obligations before the Court of Justice, taking the view that Belgium had neither fully transposed the directive nor notified the national transposing measures. In addition, it requested that Belgium be ordered to pay a daily penalty payment from the date of delivery of the judgment on account of its failure to fulfil the obligation to notify the measures transposing that directive.<sup>2</sup> The amount of the penalty payment, initially fixed at €54,639, was reduced to €6,071, in the light of the progress made by Belgium in transposing the directive since the action was brought. The Commission stated that the shortcomings persisted solely in the Brussels-Capital region.

In today’s judgment, **the Court finds, first, that, on expiry of the prescribed period, Belgium had neither adopted the measures necessary to ensure the transposition of the directive nor notified the measures transposing it** and that Belgium has therefore failed to fulfil its obligations under the directive.

Next, as regards the imposition of a penalty payment, the Court states that Article 260(3) TFEU was introduced by the Lisbon Treaty with the aim of giving a stronger incentive to the Member States to transpose directives within the periods prescribed by the EU legislature and of ensuring the application of EU legislation.

According to the Court, it is necessary in that regard to establish in what circumstances a Member State may be considered to have failed to fulfil its ‘obligation to notify measures transposing a directive’ within the meaning of that provision.

The Court recalls, in that context, its case-law according to which **the notification in question must contain sufficiently clear and precise information on the content of the national laws or regulations transposing a directive**. Accordingly, that notification, which may be accompanied by a table of equivalences, must unambiguously indicate the legislative, regulatory and administrative measures by which the Member State considers that it has fulfilled the various obligations imposed on it by the directive. In the absence of such information, the Commission is

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<sup>1</sup> Directive 2014/61/EU of the European Parliament and of the Council of 15 May 2014 on measures to reduce the cost of deploying high-speed electronic communications networks (OJ 2014 L 155, p. 1).

<sup>2</sup> Article 260(3) TFEU.

not in a position to determine whether the Member State has genuinely and fully transposed the directive.

The Court also states that the aim pursued by the introduction of Article 260(3) TFEU was not only to induce the Member States to put an end as soon as possible to an infringement, but also to simplify and speed up the procedure for the imposition of financial penalties in respect of infringements of the obligation to notify a national measure transposing a directive adopted under the legislative procedure. Prior to the introduction of that mechanism, the imposition of a financial penalty on Member States for failure to comply on time with an earlier judgment of the Court and for failure to fulfil their obligation to transpose could occur only several years after that judgment.

The Court further notes that Article 260(3) TFEU must be interpreted in such a way that it both preserves the Commission's competences with respect to ensuring the effective application of EU law and protects the rights of the defence and the procedural position enjoyed by the Member States under the combined application of Articles 258 and 260(2) TFEU. The Court must also be in a position to be able to carry out its judicial function of assessing, in one set of proceedings, whether the Member State concerned has fulfilled its notification obligations and, if necessary, appraising the seriousness of the infringement thus identified and imposing the financial penalty which it considers the most appropriate in the specific circumstances.

**The Court therefore concludes that the words 'obligation to notify measures transposing a directive' extend to the Member States' obligation to disclose sufficiently clear and precise information on the measures transposing a directive.** In order to meet the requirement of legal certainty and ensure the full transposition of the provisions of that directive in the whole of the territory concerned, the Member States are required to indicate, for each provision of the directive, the national provision(s) transposing it. Once that notification has taken place, if necessary accompanied by a table of equivalences, it is for the Commission to establish, if it intends to seek an order that the Member State concerned pay a financial penalty, that certain transposing measures are clearly lacking or do not cover the whole territory of the Member State concerned. However, it is not for the Court, in proceedings brought under Article 260(3) TFEU, to examine whether the national measures notified to the Commission correctly transpose the directive.

**In the present case, that provision is applicable in so far as Belgium has failed in part to fulfil its obligation to notify.** Since it has, at the time of the Court's examination of the facts, neither adopted the measures necessary to transpose several provisions of the directive into its domestic law, in respect of the Brussels-Capital region, nor, a fortiori, notified such transposing measures to the Commission, Belgium has in part persisted in its infringement.

**Consequently, the Court, after assessing the seriousness and the duration of that infringement, orders Belgium to pay to the Commission, from the date of delivery of the judgment and until that Member State has put an end to the infringement, a daily penalty payment of €5,000.**

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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.

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