



Press and Information

Court of Justice of the European Union
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Judgment in Case C-261/18
Commission v Ireland

Ireland is ordered to pay pecuniary penalties for failing to comply with an earlier judgment of the Court which required, in particular, that an environmental assessment be carried out in respect of a wind farm

In the judgment *European Commission v Ireland* (C-261/18), delivered on 12 November 2019, the Grand Chamber of the Court imposed pecuniary penalties on Ireland for failing to give concrete effect to the judgment of 3 July 2008, *Commission v Ireland*,¹ in so far as the Court had held in that judgment that Ireland had infringed Directive 85/337² as a result of the construction of a wind farm at Derrybrien (Ireland) without a prior environmental impact assessment having been carried out.

Following the delivery of the 2008 judgment, Ireland had introduced a regularisation procedure by which it sought to enable the operator of the Derrybrien wind farm ('the wind farm') to comply with the requirements of Directive 85/337. However, since the wind farm operator had not undergone that procedure and nor had that procedure been initiated by the Irish authorities of their own initiative, the Commission brought a second action for failure to fulfil obligations before the Court.

First of all, the Court examined the Member States' obligations when a project has been authorised in breach of the obligation to carry out a prior environmental impact assessment under Directive 85/337. The Court pointed out that Member States are required, in accordance with the principle of sincere cooperation, to take all measures necessary to remedy the failure to carry out an environmental impact assessment. They are, in particular, under an obligation to carry out an assessment for regularisation purposes, and this also after a plant has entered into operation. Such an assessment must take into account not only the future impact of the plant at issue, but also the environmental impact from the time of its completion. The assessment may result in the consents which were granted in breach of the obligation to carry out a prior assessment being amended or withdrawn.

Notwithstanding the legislative reform introducing a regularisation procedure, Ireland had failed to carry out a new environmental impact assessment of the wind farm, thereby failing to have regard to the authority attaching to the 2008 judgment.

Next, the Court rejected the different arguments put forward by Ireland to justify itself. First, Ireland cannot rely on national provisions limiting the possibilities for commencing the regularisation procedure introduced in order to ensure that that 2008 judgment was complied with. In that context, the Court pointed out that the national authorities were required to remedy the failure to carry out an impact assessment and that the obligations flowing from Directive 85/337 also applied to the wind farm's operator, since it was controlled by Ireland. Secondly, although the consents for the construction of the wind farm at Derrybrien have become final, Ireland cannot rely on legal certainty and legitimate expectations derived by the wind farm's operator from acquired rights, in

¹ Case: [C-215/06](#) Commission v Ireland.

² Council Directive 85/337/EEC of 27 June 1985 on the assessment of the effects of certain public and private projects on the environment (OJ 1985 L 175, p. 40).

order to avoid the consequences flowing from the objective finding that there was a failure to fulfil obligations under Directive 85/337. In that regard, the Court stated that projects in respect of which the consent can no longer be subject to challenge before the courts cannot be purely and simply deemed to be lawfully authorised as regards the obligation to assess their effects on the environment.

In the light of the seriousness and duration of the failure to fulfil obligations, with more than 11 years having elapsed since the 2008 judgment without the measures necessary to comply with that judgment having been adopted, and having regard to Ireland's ability to pay, the Court ordered Ireland to pay the European Commission a lump sum of €5 000 000, and also a periodic penalty payment of €15 000 per day from the date of delivery of the judgment in the present case until the date of compliance with the 2008 judgment.

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

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