



Press and Information

Court of Justice of the European Union
PRESS RELEASE No 152/13
Luxembourg, 28 November 2013

Judgment in Case C-576/11
Commission v Luxembourg

Luxembourg is ordered to pay financial penalties for failing to comply with the Court's judgment of 2006 finding that it had infringed the Urban Waste Water Directive

The Court imposes a lump sum of €2 million and a fine of €2 800 euros for each day of delay in taking the measures necessary to comply with the first judgment of 2006, until full compliance with today's judgment

The 1991 Urban Waste Water Directive¹ concerns the collection, treatment and discharge of urban waste water and the treatment and discharge of waste water from certain industrial sectors. Its objective is to protect the environment from the adverse effects of the discharges of that water. The Directive required, inter alia, Member States to identify sensitive areas corresponding to the criteria set out therein by 31 December 1998². Member States were also required to ensure by 31 December 1998 that urban waste water entering collection systems be put through more stringent treatment than for less sensitive areas before being discharged into sensitive areas, in respect of all discharges originating from agglomerations having a 'population equivalent' (p.e., a unit of measure of the average organic biodegradable load)³ of more than 10 000. However, those conditions do not necessarily apply to sensitive areas if it can be shown that the minimum percentage of reduction of the overall load entering all urban waste water treatment plants in that area is at least 75% for total phosphorus and at least 75% for total nitrogen.

In 2005, the Commission brought infringement proceedings against Luxembourg before the Court of Justice for failure to comply with the Directive⁴.

By an initial judgment handed down in 2006⁵, the Court held that Luxembourg, which had designated the entire territory of the Grand Duchy as a sensitive area, had not managed to prove that the performances of eight of the 11 agglomerations having a p.e. of more than 10 000 had complied with the Directive. As it could not show that the minimum percentage of reduction of the overall load entering a number of urban waste water treatment plants was at least 75% for total nitrogen, Luxembourg had failed to fulfil its obligations under the Directive.

In 2011, having come to the conclusion that Luxembourg had still failed to comply with that judgment of 2006, given that six treatment plants serving agglomerations having a p.e. of more than 10 000 had still not complied with the Directive's requirements, the Commission brought the present, second set of infringement proceedings, in which it asked the Court to order Luxembourg to pay a penalty payment of €11 340 for each day of delay in complying with the first judgment, from the date of delivery of the judgment in the present case until the date of compliance with the first judgment of 2006, and a daily lump sum of €1 248, from the date of delivery of the first judgment (23 November 2006) until the date of delivery of the judgment in the present case, or until the date upon which the first judgment has been complied with, if earlier.

¹ Council Directive 91/271/EEC of 21 May 1991 concerning urban waste water treatment (OJ L 135, p. 40).

² Annex II to the aforementioned directive.

³ The Directive defines p.e. as 'the organic biodegradable load having a five-day biochemical oxygen demand (BOD5) of 60 g of oxygen per day'.

⁴ Article 5(4) of the Directive.

⁵ Case [C-452/05](#) Commission v Luxembourg.

In today's judgment, the Court observes that, since Luxembourg has recognised that it has not complied with the requirements of the 2006 judgment, at least as regards two treatment plants (Beggen and Blesbruck), it is common ground that, on 28 August 2010 (the time limit given by the Commission in its additional letter of formal notice), Luxembourg had not taken all the measures necessary to comply fully with the obligations deriving from the Court's first judgment. Luxembourg has therefore failed to fulfil its obligations under EU law.

Consequently, **Luxembourg is ordered to pay a lump sum of €2 million.**

The Court notes that an order to pay a lump sum is based essentially on the assessment of the effects on public and private interests of the failure of the Member State concerned to comply with its obligations, in particular where the breach has persisted for a long period after the judgment initially establishing it was delivered.

However, in cases of large-scale infrastructure projects such as those at issue in the present case, the nature, complexity, cost, and duration for completing those projects must be taken into account both in the assessment of whether a lump sum must be imposed and in the calculation of the amount thereof. It is apparent from the case-file that Luxembourg is currently making considerable efforts and investments in order to comply with the first judgment of 2006. The Commission has, moreover, observed that, to date, the number of agglomerations not complying with the requirements of the Directive has gone down to six, (Beggen, Blesbruck, Bonnevoie, Hespérange, Mersch, Übersyren⁶) of the 12 existing ones. Whilst taking due note of this undeniable investment effort, the Court states that, in designating its entire territory as a 'sensitive area', Luxembourg recognised the need for increased environmental protection of its territory, taking the view that the bodies of surface water were already affected or liable to be affected in the short term by eutrophication. The failure to treat urban waste water causes particularly serious harm to the environment.

The Court also notes that the infringement established by the first judgment of 2006 has persisted for approximately seven years, which is excessive, even if it must be recognised that the tasks to be carried out required a significant period of several years and that compliance with that judgment must be regarded as being at an advanced stage (for the Bonnevoie, Hespérange, Mersch and Übersyren treatment plants).

Should the infringement established by the first judgment of 2006 have continued until 28 November 2013, the date of the present judgment, **Luxembourg is also ordered to pay a penalty payment of €2 800** for each day of delay, as from today's date, in taking the measures necessary to comply with the 2006 judgment. The Court considers that the imposition of a penalty payment constitutes an appropriate financial means to ensure full compliance with a judgment.

The criteria which must be taken into account in order to ensure that penalty payments have coercive force and that EU law is applied uniformly and effectively are, in principle, the duration of the infringement, its degree of seriousness, and the ability of the Member State concerned to pay. In the application of those criteria, regard must be had to the effects on public and private interests of failure to comply and to the urgency with which the Member State concerned must be induced to fulfil its obligations.

In the present case, although it is true that, according to the Grand Duchy of Luxembourg, discharges from non-compliant p.e. in Luxembourg declined in 2011, bringing the rate of non-compliance (in p.e.) from 64% down to 21%, the aggravating circumstances established by the Commission must nevertheless be taken into account, those being the duration of the infringement (almost seven years) and the designation of its entire territory as a 'sensitive area'. That designation led to the conclusion that Luxembourg could not be unaware of the need to undertake work to bring its water treatment plants into line with EU law, at least as of 1999.

⁶ As regards, in particular, the Übersyren water treatment plant, which receives the waste water from Luxembourg airport, the Luxembourgish government explained that exceptionally abundant snowfall in December 2010 caused the values for that month to be exceeded beyond all usual parameters due to the quantities of products (including glycol) used to clear the runways, roads, and ramps, and to de-ice the aircraft prior to take-off.

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 judgment is published on the CURIA website on the day of delivery.

Press contact: Christopher Fretwell ☎ (+352) 4303 3355