Reports of Cases

JUDGMENT OF THE COURT (Seventh Chamber)

20 March 2025*

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(Failure of a Member State to fulfil obligations – Article 258 TFEU – Promotion of clean and energy-efficient road transport vehicles – Directive (EU) 2019/1161 – Failure to transpose and to notify the transposition measures – Article 260(3) TFEU – Application for an order to pay a lump sum)

In Case C-480/23,

* Language of the case: Bulgarian.

ACTION for failure to fulfil obligations under Article 258 and Article 260(3) TFEU, brought on 26 July 2023,

European Commission, represented by P. Messina and E. Rousseva, acting as Agents,

applicant,

v

Republic of Bulgaria, represented by T. Mitova, S. Ruseva and R. Stoyanov, acting as Agents,

defendant,

THE COURT (Seventh Chamber),

composed of F. Biltgen, President of the First Chamber, acting as President of the Seventh Chamber, M.L. Arastey Sahún (Rapporteur), President of the Fifth Chamber, and J. Passer, Judge,

Advocate General: N. Emiliou,

Registrar: A. Calot Escobar,

having regard to the written procedure,

having decided, after hearing the Advocate General, to proceed to judgment without an Opinion,

gives the following

Judgment

1 By its application, the European Commission claims that the Court should:

– find that, by failing to adopt the laws, regulations and administrative provisions necessary to ensure compliance with Directive (EU) 2019/1161 of the European Parliament and of the Council of 20 June 2019 amending Directive 2009/33/EC on the promotion of clean and energy-efficient road transport vehicles (OJ 2019 L 188, p. 116), or, in any event, by failing to notify them to the Commission, the Republic of Bulgaria has failed to fulfil its obligations under Article 2(1) of that directive;

– order the Republic of Bulgaria to pay to the Commission a lump sum corresponding to one of the following two amounts, whichever is the highest:

  – a daily sum of EUR 1 800, multiplied by the number of days between the day after the expiry of the deadline for transposition of Directive 2019/1161 set out in the directive and the date on which the infringement was brought to an end, or, where the infringement has not been brought to an end, the date of delivery of the judgment in the present case, or

  – a minimum lump sum payment of EUR 504 000;

– where the failure to fulfil obligations under the first indent persists until delivery of the judgment in the present case, order the Republic of Bulgaria to pay to the Commission a penalty payment of EUR 10 800 for each day from the date of delivery of that judgment until the date on which the Republic of Bulgaria fulfils its obligations under Directive 2019/1161;

– order the Republic of Bulgaria to pay the costs.

I. Legal context

A. Directive 2019/1161

2 Recitals 1, 2, 5, 8, 12 and 33 of Directive 2019/1161 state:

‘(1) In accordance with the conclusions of the European Council of 23-24 October 2014, the Union is committed to a sustainable, competitive, secure and decarbonised energy system. …

(2) In its Communication of 20 July 2016 entitled “A European Strategy for Low-Emission Mobility” the Commission announced that in order to meet the Union’s commitments pledged at the 21st Conference of the Parties to the United Nations Framework Convention on Climate Change held in Paris in 2015, the decarbonisation of the transport sector must be accelerated and that therefore greenhouse gas emissions and air pollutant emissions from transport will need to be firmly on the path towards zero by mid-century. Moreover, emissions of air pollutants from transport that are harmful to health and the environment need to be significantly reduced without delay. That can be achieved by an array of policy initiatives, including measures that support a shift towards public transport and the use of public procurement to promote clean vehicles.

…

(5) Innovation in new technologies helps to lower vehicle CO_2 emissions and to reduce air and noise pollution, while supporting the decarbonisation of the transport sector. An increased uptake of low- and zero-emission road vehicles will reduce CO_2 emissions and certain pollutant emissions (particulate matter, nitrogen oxides and non-methane hydrocarbons) and thus improve the air quality in cities and other polluted areas, while contributing to the competitiveness and growth of Union industry in the increasing global markets for low- and zero-emission vehicles. The Commission should pursue policy measures to foster widespread industrial uptake of and the growth of manufacturing capacity for such new technologies in all Member States in order to contribute to a level-playing field and a balanced development across Member States.

…

(8) Taking into account that public expenditure on goods, works and services represented approximately 16% of [the gross domestic product (GDP)] in 2018, public authorities, through their public procurement policy, can foster and support markets for innovative goods and services. In order to achieve that goal, Directive 2009/33/EC of the European Parliament and of the Council [of 23 April 2009 on the promotion of clean and

energy-efficient road transport vehicles (OJ 2009 L 120, p. 5)] should set out clear and transparent requirements, including clear, long-term procurement targets and a simple method for their calculation. …

…

(12) Extending the scope of Directive 2009/33/EC by including practices such as lease, rental and hire-purchase of vehicles, as well as contracts for certain services, ensures that all relevant procurement practices are covered. The services covered by the scope of this Directive, such as public road transport services, special purpose road transport passenger services, non-scheduled passenger transport, as well as specific mail and parcel services and refuse collection services, should be those where the vehicles that are used for the provision of these services fall within the vehicle categories covered by this Directive, and where they represent a major element in the contract. …

…

(33) Since the objectives of this Directive, namely to provide a demand-side stimulus for clean vehicles in support of a low-emission mobility transition, cannot be sufficiently achieved by the Member States alone, but can rather, by reason of a common and long-term policy framework and for reasons of scale be better achieved at Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on the European Union. In accordance with the principle of proportionality, as set out in that Article, this Directive does not go beyond what is necessary in order to achieve those objectives.'

3 Article 1 of that directive provides:

'Directive 2009/33/EC is amended as follows:

…

(2) Article 1 is replaced by the following:

"Article 1

Subject matter and objectives

This Directive requires Member States to ensure that contracting authorities and contracting entities take into account lifetime energy and environmental impacts, including energy consumption and emissions of CO_2 and of certain pollutants, when procuring certain road transport vehicles with the objectives of promoting and stimulating the market for clean and energy-efficient vehicles and of improving the contribution of the transport sector to the environment, climate and energy policies of the Union.";

…

(4) Article 3 is replaced by the following:

"Article 3

Scope

1. This Directive shall apply to procurement through:
(a) contracts for the purchase, lease, rent or hire-purchase of road transport vehicles awarded by contracting authorities or contracting entities in so far as they are under an obligation to apply the procurement procedures set out in [Directive 2014/24/EU of the European Parliament and of the Council of 26 February 2014 on public procurement and repealing Directive 2004/18/EC (OJ 2014 L 94, p. 65)] and [Directive 2014/25/EU of the European Parliament and of the Council of 26 February 2014 on procurement by entities operating in the water, energy, transport and postal services sectors and repealing Directive 2004/17/EC (OJ 2014 L 94, p. 243)];
(b) public service contracts within the meaning of Regulation (EC) No 1370/2007 of the European Parliament and of the Council [of 23 October 2007 on public passenger transport services by rail and by road and repealing Council Regulations (EEC) Nos 1191/69 and 1107/70 (OJ 2007 L 315, p. 1)] having as their subject matter the provision of passenger road transport services in excess of a threshold which shall be defined by Member States not exceeding the applicable threshold value set in Article 5(4) of that Regulation;
(c) service contracts set out in Table 1 of the Annex to this Directive in so far as the contracting authorities or contracting entities are under an obligation to apply the procurement procedures set out in Directives 2014/24/EU and 2014/25/EU.

…”

(5) Article 4 is replaced by the following:

“Article 4

Definitions

For the purpose of this Directive:
(1) “contracting authorities” means …;
(2) “contracting entities” means …;
(3) “road transport vehicle” means …;
(4) “clean vehicle” means:
(a) a vehicle of category M_1, M_2 or N_1 with a maximum tail-pipe emission expressed in CO_2 g/km and real driving pollutant emissions below a percentage of the applicable emission limits as laid down in Table 2 of the Annex; or
(b) a vehicle of category M_3, N_2 or N_3 using alternative fuels as defined in points (1) and (2) of Article 2 of Directive 2014/94/EU of the European Parliament and of the Council [of 22 October 2014 on the deployment of alternative fuels infrastructure (OJ 2014 L 307, p. 1)], excluding fuels produced from high indirect land-use change-risk feed stock for which a significant expansion of the production area into land with high-carbon stock is observed in accordance with Article 26 of Directive (EU) 2018/2001 of the European Parliament and of the Council [of 11 December 2018 on the promotion of the use of energy from renewable sources (OJ 2018 L 328, p. 82)]. In the case of vehicles using liquid biofuels, synthetic and paraffinic fuels, those fuels shall not be blended with conventional fossil fuels;
(5) “zero-emission heavy duty vehicle” means a clean vehicle as defined in point 4(b) of this Article without an internal combustion engine, or with an internal combustion engine that emits less than 1 g CO_2/kWh as measured in accordance with Regulation (EC) No 595/2009 of the European Parliament and of the Council [of 18 June 2009 on type-approval of motor vehicles and engines with respect to emissions from heavy duty

vehicles (Euro VI) and on access to vehicle repair and maintenance information and amending Regulation (EC) No 715/2007 and Directive 2007/46/EC and repealing Directives 80/1269/EEC, 2005/55/EC and 2005/78/EC (OJ 2009 L 188, p. 1)] and its implementing measures, or that emits less than 1 g CO_2/km as measured in accordance with Regulation (EC) No 715/2007 of the European Parliament and of the Council [of 20 June 2007 on type approval of motor vehicles with respect to emissions from light passenger and commercial vehicles (Euro 5 and Euro 6) and on access to vehicle repair and maintenance information (OJ 2007 L 171, p. 1)] and its implementing measures."

(6) Article 5 is replaced by the following:

"Article 5

Minimum procurement targets

1. Member States shall ensure that the procurement of vehicles and services referred to in Article 3 complies with the minimum procurement targets for clean light-duty vehicles set out in Table 3 of the Annex and for clean heavy-duty vehicles set out in Table 4 of the Annex. …

…"'

4 Article 2 of that directive provides:

'1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by 2 August 2021. They shall immediately inform the Commission thereof.

When Member States adopt those measures, they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. The methods of making such reference shall be laid down by Member States.

2. Member States shall communicate to the Commission the text of the main measures of national law which they adopt in the field covered by this Directive.'

B. The 2023 Communication

5 Communication 2023/C 2/01 from the Commission, entitled 'Financial sanctions in infringement proceedings' (OJ 2023 C 2, p. 1; 'the 2023 Communication'), sets out, in sections 3 and 4 thereof, the rules relating to the 'penalty payment' and 'lump sum payment', respectively.

6 Section 4.2 of that communication sets out the calculation method for the lump sum as follows:

'The lump sum is calculated in a manner broadly similar to the method for calculating the penalty payment, that is:

– multiplying a flat-rate amount by a coefficient for seriousness,

– multiplying the result by the n factor,

– multiplying the result by the number of days the infringement persists …

…’

7 Section 4.2.1 of that communication states:

‘To calculate the lump sum, the daily amount is to be multiplied by the number of days the infringement persists. The latter is defined as follows:

…

– for actions brought under Article 260(3) TFEU, this is the number of days between the day after the expiry of the deadline for transposition set out in the directive at issue and the date the infringement comes to an end, or, failing compliance, the date of the delivery of the judgment under Article 260 TFEU.

…’

8 Under section 4.2.2 of the 2023 Communication:

‘For the calculation of the lump sum, the Commission applies the same coefficient for seriousness and the same fixed n factor as for the calculation of the penalty payment …

The flat-rate amount for the lump sum is lower than for penalty payments. …

The flat-rate amount applicable for the lump sum is set out in point 2 of Annex I.

In contrast to the calculation of the penalty payment, a coefficient for duration is not applied when calculating the lump sum, given that the duration of the infringement is taken into account by multiplying the daily amount by the number of days the infringement persists.’

9 Annex I to that communication, entitled ‘Data used for determining financial sanctions proposed to the Court’, states, in point 2 thereof, that the flat-rate amount for the lump sum payment mentioned in section 4.2.2 of that communication is fixed at EUR 1 000 per day, that is one third of the flat-rate for penalty payments, and, in point 3 thereof, that the ‘n’ factor for the Republic of Bulgaria is fixed at 0.18. It is stated in point 5 of Annex I that the minimum lump sum for the Republic of Bulgaria is set at EUR 504 000.

II. Pre-litigation procedure

10 On 29 September 2021, the Commission sent the Republic of Bulgaria a letter of formal notice in which it reminded that Member State that the deadline prescribed for transposing Directive 2019/1161 had expired and that the measures transposing that directive in full had not yet been notified to the Commission. Consequently, the Commission invited that Member State to notify it of the measures adopted and reminded it that, if the Bulgarian legislation in force already complied with that directive, that Member State was required to communicate the text of the corresponding national provisions as well as to indicate the transposition measures with sufficient clarity and precision.

11 In its reply of 29 November 2021, the Republic of Bulgaria informed the Commission that Directive 2019/1161 would be transposed in full by the adoption of the Law amending and supplementing the Law on public procurement, the Law amending and supplementing the Law on road transport, a regulation establishing the requirements applicable to clean and energy-efficient vehicles, and an act of the Council of Ministers on the determination of contracting entities under an obligation to adopt the clean vehicles requirements and the share of those vehicles in the total number of vehicles. The Republic of Bulgaria referred to an indicative timetable according to which those laws would be adopted before the end of April 2022 and those administrative acts two months after the adoption of those laws.

12 In the absence of any subsequent communication concerning the transposition of Directive 2019/1161, the Commission, on 6 April 2022, sent the Republic of Bulgaria a reasoned opinion requesting that Member State to take, within two months of receipt, the measures necessary to comply with that opinion.

13 By letter of 30 May 2022, the Republic of Bulgaria did not dispute the alleged infringement, but recalled that Directive 2019/1161 would be transposed in full by the adoption of the laws and administrative acts referred to in paragraph 11 above.

14 Taking the view that, more than 20 months after the expiry of the deadline for the transposition of that directive, the measures ensuring its transposition in full had still not been adopted or, at the very least, notified to the Commission, the Commission brought the present action before the Court.

III. Procedure before the Court

15 On 7 February 2024, the written part of the procedure in the present case was closed.

16 By document of 3 May 2024, the Commission informed the Court that the transposition of Directive 2019/1161 by the Republic of Bulgaria could be regarded as having been completed on 5 January 2024 and that, consequently, it was discontinuing its action in part, by withdrawing its claim that that Member State be ordered to make a periodic penalty payment, while at the same time modifying its claim that that Member State should be ordered to pay a lump sum, requesting an amount of EUR 1 593 000 in that regard.

17 On 13 May 2024, the Republic of Bulgaria submitted its observations on the Commission's discontinuance in part and on the modification of the form of order sought by that institution.

18 On 11 and 14 June 2024, the Republic of Bulgaria lodged a document, which was placed on the file by decision of the President of the Court of 17 June 2024, in accordance with Article 128(2) of the Rules of Procedure of the Court, as evidence adduced after the close of the written part of the procedure.

19 In that document, that Member State presented, in the first place, the results of surveys regarding road transport vehicles acquired or used to provide transport services under public procurement contracts and, in the second place, information provided by the contracting entities.

20 The Republic of Bulgaria submitted that additional information in support of its arguments that the Court should dismiss the application for an order to pay a lump sum or, in the alternative, reduce the amount of the lump sum requested by the Commission.

21 By letter of 14 October 2024, the Commission responded to that new evidence.

IV. The action

A. Failure to fulfil obligations under Article 258 TFEU

1. Arguments of the parties

22 In its application, the Commission submits, as a preliminary point, that, in accordance with the case-law of the Court, in particular the judgments of 27 October 2011, *Commission* v *Poland* (C-362/10, EU:C:2011:703, paragraph 46), and of 15 October 2015, *Commission* v *Germany* (C-137/14, EU:C:2015:683, paragraph 51), the provisions of a directive must be implemented with unquestionable binding force and with the specificity, precision and clarity necessary to satisfy the requirements of legal certainty. Furthermore, the Commission states that, where a directive expressly provides that the measures transposing that directive are to contain a reference to it or that such reference is to be made on the occasion of its official publication, as provided in the present case in the second subparagraph of Article 2(1) of Directive 2019/1161, according to that case-law, it is in any event necessary to adopt specific transposition measures. It relies in that regard on paragraph 49 of the judgment of 11 June 2015, *Commission* v *Poland* (C-29/14, EU:C:2015:379).

23 Relying on paragraphs 51 and 59 of the judgment of 8 July 2019, *Commission* v *Belgium (Article 260(3) TFEU – High-speed networks)*, C-543/17, EU:C:2019:573), the Commission states that the Member States are, moreover, required to provide it with clear and precise information on the transposition of a directive. They must indicate unequivocally the laws, regulations and administrative provisions by means of which they consider that they have satisfied the various requirements imposed on them by the directive. The Member States are also required to state, for each provision of the directive at issue, the national measure or measures ensuring its transposition, where relevant accompanied by a correlation table.

24 In the present case, the Commission submits that, on the expiry of the period laid down in the reasoned opinion, the Republic of Bulgaria had not adopted the measures necessary to transpose Directive 2019/1161 into national law.

25 In addition, according to the Commission, the Republic of Bulgaria had failed to fulfil its obligation to communicate immediately to the Commission the text of the transposing measures. The Commission asserts that that Member State does not dispute that it has failed to fulfil its obligation in that regard.

26 In its defence, the Republic of Bulgaria submits that the delay in transposing Directive 2019/1161 was due to political instability in Bulgaria, caused by frequent changes of government and by the dissolution of the National Assembly.

27 That Member State asserts that the law transposing that directive was adopted on 5 October 2023 and published in *Darzhaven vestnik* No 88 of 20 October 2023. That law entered into force and was notified in the Commission's Themis system under number MNE(2023)05496.

28 For that reason, and in the light of the Commission's broad discretion as regards the decision whether or not to pursue proceedings for a declaration that a Member State has failed to fulfil its obligations, the Republic of Bulgaria requests that institution to discontinue the action in the present case.

29 In addition, the Republic of Bulgaria states that some of the definitions provided for in Directive 2019/1161 existed in the national legislation adopted prior to 2 August 2021.

30 In particular, according to that Member State, Article 5(2) and (4) of the Zakon za obshtestvenite porachki (Law on public procurement) (DV No 13 of 16 February 2016), as amended, coincides with Article 4 of Directive 2009/33, as amended by Directive 2019/1161, as regards the definition of 'contracting authorities' and 'contracting entities', in so far as, in establishing those definitions, the EU legislature referred to Directive 2014/24 and Directive 2014/25.

31 As regards Article 149(1) of the Zakon za dvizhenieto po patishtata (Law on road transport) (DV No 20 of 5 March 1999), as amended, the Republic of Bulgaria claims that that provision corresponds to Article 4(3) of Directive 2009/33, as amended by Directive 2019/1161, which defines 'road transport vehicle' by reference to Regulation (EU) 2018/858 of the European Parliament and of the Council of 30 May 2018 on the approval and market surveillance of motor vehicles and their trailers, and of systems, components and separate technical units intended for such vehicles, amending Regulations (EC) No 715/2007 and (EC) No 595/2009 and repealing Directive 2007/46/EC (OJ 2018 L 151, p. 1).

32 Furthermore, the Republic of Bulgaria submits that, in view of the political instability at national level, which constitutes a situation of *force majeure*, and the difficulties faced during the legislative procedure on account of the COVID-19 pandemic, it was objectively impossible for it to implement Directive 2019/1161 within the prescribed time limits.

33 In its reply, the Commission submits that, in accordance with the case-law of the Court, in particular the judgments of 25 January 2017, *Vilkas* (C-640/15, EU:C:2017:39, paragraph 53 and the case-law cited), and of 8 June 2023, *Commission* v *Slovakia (Right of termination without fees)* (C-540/21, EU:C:2023:450, paragraphs 80 and 81 and the case-law cited), although the concept of *force majeure* is not predicated on absolute impossibility for a Member State to fulfil the obligations under EU law, it nevertheless requires the non-conformity in question to be attributable to circumstances beyond the control of that State, which are abnormal and unforeseeable and the consequences of which could not have been avoided despite the exercise of all due diligence.

34 That institution submits that the Republic of Bulgaria relied on the difficulties faced during the legislative procedure and resulting from the COVID-19 pandemic for the first time only at the stage of its defence before the Court.

35 The Commission does not dispute the fact that the COVID-19 pandemic is an exceptional and unforeseeable crisis, beyond the control of the Republic of Bulgaria.

36 It submits, however, that it is necessary to establish a specific link between the circumstance relied on as *force majeure* and the failure to fulfil obligations at issue, stating that, according to the case-law of the Court and, in particular, the judgment of 25 January 2017, *Vilkas* (C-640/15, EU:C:2017:39, paragraph 54 and the case-law cited), the concept of *force majeure* does not have the same scope in the various spheres of application of EU law and that its meaning must be determined by reference to the legal context in which it is to operate.

37 According to the Commission, the Republic of Bulgaria has not demonstrated the existence of a specific link between the COVID-19 pandemic and the delay in transposing Directive 2019/1161. That Member State did not indicate either the length of the delay in transposition due to that pandemic or state the reasons why that pandemic prevented it from completing that transposition within the prescribed time limits.

38 The Commission submits, relying on the judgment of 8 June 2023, *Commission* v *Slovakia (Right of termination without fees)* (C-540/21, EU:C:2023:450, paragraphs 80 and 81 and the case-law cited), that the argument based on *force majeure* may be pleaded only for the period necessary in order to resolve the difficulties encountered.

39 According to the Commission, the period for transposing Directive 2019/1161 began to run seven months before the state of emergency in the Republic of Bulgaria was declared on account of the COVID-19 pandemic. As is apparent from the defence, the preparatory work for the draft law transposing that directive did not begin until 2021.

40 The Commission claims that all the Member States, with the exception of the Republic of Estonia and the Republic of Bulgaria, transposed Directive 2019/1161 before the end of 2022, the Republic of Estonia having completed the transposition of that directive in April 2023.

41 In those circumstances, the COVID-19 pandemic cannot justify the Republic of Bulgaria's failure to fulfil its obligation under Article 2 of Directive 2019/1161 for more than two years after the expiry of the transposition deadline.

42 As regards the Republic of Bulgaria's argument that political instability prevented it from transposing Directive 2019/1161 within the prescribed time limits, the Commission states that, in accordance with the Court's settled case-law and in particular the judgments of 23 November 2000, *Commission* v *France* (C-319/99, EU:C:2000:649, paragraph 10); of 7 December 2000, *Commission* v *Italy* (C-423/99, EU:C:2000:681, paragraph 10); of 16 July 2020, *Commission* v *Ireland (Anti-money laundering)* (C-550/18, EU:C:2020:564, paragraph 85); and of 25 February 2021, *Commission* v *Spain (Personal Data Directive – Criminal law)* (C-658/19, EU:C:2021:138, paragraph 77), a Member State may not plead provisions, practices or situations prevailing in its domestic legal order to justify its failure to transpose a directive within the period prescribed by the directive.

43 In any event, the Commission asserts that the parliamentary crisis to which the Republic of Bulgaria refers began in April 2021, only four months before the expiry of the deadline for transposing Directive 2019/1161.

44 In addition, the Commission states that, although the Republic of Bulgaria maintains that the national law already included some of the definitions introduced by that directive, it nevertheless produced an explanatory document in that regard only in its defence.

45 Moreover, the communication of an explanatory document relating to the effective implementation of the provisions of a directive by existing provisions of national law does not in itself permit the inference that there is a transposing measure. If a directive expressly requires the Member States to ensure that the provisions necessary for its implementation include a reference to that directive or that such reference is made when they are officially published, it is necessary for the Member States to adopt a specific measure transposing the directive in question. The Commission relies in that regard on the judgments of 29 October 2009, *Commission* v *Poland* (C-551/08, EU:C:2009:683, paragraph 23); of 11 June 2015, *Commission* v *Poland* (C-29/14, EU:C:2015:379, paragraph 49); of 4 October 2018, *Commission* v *Spain* (C-599/17, EU:C:2018:813, paragraph 21); and of 16 July 2020, *Commission* v *Ireland (Anti-money laundering)* (C-550/18, EU:C:2020:564, paragraph 31).

46 In the present case, such a requirement is expressly laid down in the second subparagraph of Article 2(1) of Directive 2019/1161.

47 Accordingly, the Commission submits that the existing provisions of Bulgarian law cannot be regarded as a specific measure transposing Directive 2019/1161.

48 In its rejoinder, the Republic of Bulgaria claims, contrary to what the Commission asserts, that it provided, both in the pre-litigation procedure and in its defence, specific, objective and precise information on the development of the procedure for implementing the provisions of Directive 2019/1161.

49 As regards the COVID-19 pandemic, the Republic of Bulgaria submits that, since the legislative procedure is lengthy, the transposition of that directive could not be achieved immediately after the end of that pandemic.

50 That Member State also refers to extended periods during which there was no legislative body competent to adopt the laws necessary to transpose the provisions of that directive.

51 The Republic of Bulgaria states that it produced, in its defence, a correlation table setting out the provisions of the national legislation that correspond to the various provisions of Directive 2019/1161.

2. Findings of the Court

52 Pursuant to the first subparagraph of Article 2(1) of Directive 2019/1161, the Member States were to bring into force the laws, regulations and administrative provisions necessary to comply with that directive by 2 August 2021 and were immediately to inform the Commission thereof. Under the second subparagraph of Article 2(1), when Member States adopt those provisions, they are to contain a reference to that directive or be accompanied by such a reference on the occasion of their official publication.

53 Article 2(2) of Directive 2019/1161 provides that Member States are to communicate to the Commission the text of the main measures of national law which they adopt in the field covered by that directive.

54 According to settled case-law, the question whether a Member State has failed to fulfil its obligations must be determined by reference to the situation prevailing in that Member State at the end of the period laid down in the Commission's reasoned opinion, the Court being unable to

take account of any subsequent changes (judgments of 25 February 2021, *Commission* v *Spain (Personal Data Directive – Criminal law)*, C-658/19, EU:C:2021:138, paragraph 15, and of 25 April 2024, *Commission* v *Poland (Whistleblowers directive)*, C-147/23, EU:C:2024:346, paragraph 28 and the case-law cited).

55 In the present case, it is apparent from the file submitted to the Court that, on the expiry of the period laid down in the reasoned opinion of 6 April 2022, the Republic of Bulgaria had not adopted the laws, regulations and administrative provisions necessary to comply with Directive 2019/1161 in full and, accordingly, had not communicated those provisions to the Commission.

56 That Member State submits, in the first place, that the existing legislation already included some of the concepts defined by Directive 2019/1161, in particular those of 'contracting authorities', 'contracting entities' and 'road transport vehicle'.

57 In that regard, it must be noted that Directive 2019/1161 not only amended the definition of the three concepts that are referred to in paragraph 56 above and are set out in Article 4 of Directive 2009/33, but also defined two other concepts, namely that of 'clean vehicle' and that of 'zero-emission heavy duty vehicle'. In addition, Directive 2019/1161 amended other provisions of Directive 2009/33.

58 The Republic of Bulgaria has not shown that the existing national legislation ensured the implementation of all of the changes introduced by Directive 2019/1161.

59 In the second place, that Member State submits that it was objectively impossible for it to ensure the transposition of Directive 2019/1161 on account, first, of the political instability in Bulgaria caused by the frequent changes of government and by the dissolution of the National Assembly, and second, of the COVID-19 pandemic, which led to delays in the legislative work, and that those two factors constitute also situations of *force majeure*.

60 The argument of the Republic of Bulgaria relating to the political instability cannot be accepted, in accordance with the Court's settled case-law according to which a Member State cannot plead provisions, practices or situations prevailing in its domestic legal order to justify failure to observe obligations arising under EU law, such as failure to transpose a directive within the period prescribed (judgments of 25 February 2021, *Commission* v *Spain (Personal Data Directive – Criminal law)*, C-658/19, EU:C:2021:138, paragraph 19 and the case-law cited, and of 25 April 2024, *Commission* v *Poland (Whistleblowers directive)*, C-147/23, EU:C:2024:346, paragraph 33).

61 As regards the Republic of Bulgaria's argument relating to the COVID-19 pandemic, it is sufficient to recall that, although the concept of *force majeure* is not predicated on absolute impossibility to fulfil obligations under EU law, it nevertheless requires the failure in question to be attributable to circumstances beyond the control of the party claiming *force majeure*, which are abnormal and unforeseeable and the consequences of which could not have been avoided despite the exercise of all due diligence, and a situation of *force majeure* may be pleaded only for the period necessary in order to resolve those difficulties (judgments of 8 June 2023, *Commission* v *Slovakia (Right of termination without fees)*, C-540/21, EU:C:2023:450, paragraph 81, and of 25 April 2024, *Commission* v *Poland (Whistleblowers directive)*, C-147/23, EU:C:2024:346, paragraph 36).

62 While a health crisis on a scale such as that of the COVID-19 pandemic is a circumstance beyond the control of the Republic of Bulgaria, and is abnormal and unforeseeable, the fact remains that it fell to that Member State to act with all due diligence by informing the Commission in good time of the difficulties it faced, at the very least before the expiry of the period laid down in the reasoned opinion of 6 April 2022 (see, to that effect, judgment of 25 April 2024, *Commission* v *Poland (Whistleblowers directive)*, C-147/23, EU:C:2024:346, paragraph 36). As is apparent from paragraphs 5 to 8 of the rejoinder, and as the Commission confirmed in its document of 3 May 2024 by which it discontinued in part its action, the Republic of Bulgaria did not transpose Directive 2019/1161 in full until 5 January 2024.

63 In the light of those considerations, it must be stated that, by failing to adopt the laws, regulations and administrative provisions necessary to comply with Directive 2019/1161 within the prescribed time limits and, accordingly, by failing to notify them to the Commission, the Republic of Bulgaria has failed to fulfil its obligations under Article 2(1) of that directive.

B. Imposition of a lump sum under Article 260(3) TFEU

1. Arguments of the parties

64 The Commission claims that the failure to fulfil obligations at issue comes within the scope of Article 260(3) TFEU and that the 2023 Communication is applicable to the present case.

65 It asserts that, in accordance with section 2 of that communication, the financial sanctions imposed under Article 260 TFEU should be based on three criteria, namely the seriousness of the infringement, its duration, and the need to ensure that the financial sanction itself is a deterrent to further infringements.

66 As regards, in the first place, the seriousness of the infringement, the Commission submits that, in the case of actions brought under Article 260(3) TFEU, it systematically applies a coefficient for seriousness of 10 in the event of a complete failure to fulfil the obligation to notify the transposition measures. The Commission states that, in accordance with section 3.2.2 of the 2023 Communication, in a Union based on the respect of the rule of law, all legislative directives are to be considered of equal importance and require complete transposition by the Member States within the deadlines that they set.

67 The Commission claims that, since the Court has stated that the Member State's obligation to notify transposition measures includes an obligation to provide sufficiently clear and precise information on which national provisions transpose the corresponding provisions of a directive (see, to that effect, judgment of 8 July 2019, *Commission* v *Belgium (Article 260(3) TFEU – High-speed networks)*, C-543/17, EU:C:2019:573, paragraphs 51 and 59), failure by that Member State to fulfil that obligation may be subject to a sanction under Article 260(3) TFEU.

68 Accordingly, the Commission proposes that a coefficient for seriousness of 10 be applied in the present case on a scale of 1 to 20. It states that that coefficient of 10 is particularly moderate in the case of a failure to transpose and a complete failure to notify transposition measures. The Commission submits that the horizontal application of a coefficient for seriousness of 10 in all cases of complete failure to transpose and to notify to the Commission transposition measures ensures legal certainty and the predictability of the action taken by it, as well as equal treatment of the Member States.

69 The Commission maintains that the obligation to adopt national measures for the purposes of ensuring that a directive is transposed in full and the obligation to notify those measures to the Commission are fundamental obligations incumbent on the Member States in order to ensure optimal effectiveness of EU law and that failure to fulfil those obligations should, therefore, be regarded as definitely serious. It cites in that regard the judgment of the Court of 25 February 2021, *Commission* v *Spain (Personal Data Directive – Criminal law)* (C-658/19, EU:C:2021:138, paragraph 64 and the case-law cited).

70 As regards, in the second place, the duration of the infringement, the Commission states that that is equivalent, as regards the calculation of the lump sum, to the number of days during which the infringement persisted. That duration is calculated in accordance with section 4.2.1 of the 2023 Communication and corresponds to the number of days between the day after the expiry of the deadline for transposition of the directive in question and the date the infringement came to an end. In the present case, the Commission states that the period to be taken into account is that between 3 August 2021, the deadline for transposition of Directive 2019/1161 having expired on 2 August 2021, and 4 January 2024, Directive 2019/1161 having been transposed in full into Bulgarian law on 5 January 2024, which corresponds to a period of 885 days.

71 As regards, in the third place, the deterrent effect of the sanction in the light of Member States' capacity to pay, the Commission states that it is expressed by the 'n factor' set for each Member State in point 3 of Annex I to the 2023 Communication. The method of its calculation, which was revised by that communication, is now based mainly on the Member States' GDP and, secondarily, on their population. In accordance with point 3 of that annex, the 'n' factor for the Republic of Bulgaria is 0.18.

72 The Commission proposes that the lump sum amount be set by multiplying the daily amount determined in accordance with sections 4.2 and 4.2.2 of the 2023 Communication and corresponding to EUR 1 800 per day (1000x10x0.18) by the number of days the infringement persisted (885 days). The total amount of the lump sum sought thus amounts to EUR 1 593 000, which is in any event higher than the minimum lump sum, set in point 5 of Annex I to that communication at EUR 504 000 for the Republic of Bulgaria.

73 The Republic of Bulgaria asks the Court, principally, to reject the Commission's claim that it be ordered to pay a lump sum or, in the alternative, to reduce the amount of the lump sum sought.

74 As regards the amount of the lump sum, the Republic of Bulgaria submits that the difficulties faced by that Member State, referred to in paragraph 32 above, should be taken into account for the purpose of determining the coefficient for seriousness of the alleged infringement.

75 That Member State asserts that, although the existing Bulgarian legislation does not expressly refer to Directive 2019/1161, that does not prevent individuals from relying on rights derived from that legislation which meets the requirements of that directive.

76 According to the Republic of Bulgaria, that latter circumstance should also be taken into account in the examination of the seriousness of the alleged infringement and should lead, in the event that the Commission's application pursuant to Article 260(3) TFEU is not dismissed in its entirety by the Court, to the lump sum amount being set at the lowest possible level.

77 In its reply, the Commission submits, as it maintained in the context of the examination of the failure to fulfil obligations under Article 258 TFEU, that the Republic of Bulgaria cannot plead *force majeure* in order to avoid its payment obligation.

78 The Commission maintains that the imposition of a lump sum is based on the assessment of the effects on private and public interests of the failure of the Member State concerned to comply with its obligations, in particular where the infringement has persisted for a long period, relying in that regard on the judgment of 16 July 2020, *Commission* v *Ireland (Anti-money laundering)* (C-550/18, EU:C:2020:564, paragraph 76).

79 In its rejoinder, the Republic of Bulgaria submits that, by systematically applying a coefficient of 10 to all infringements comparable to that in the present case, the Commission fails to make the sanction specific to the infringement committed.

80 According to that Member State, in the light of its specific circumstances, the application of that coefficient in the present case is excessive.

81 The Republic of Bulgaria submits that the failure, in the Commission's approach, to render the sanction specific does not make it possible for the desired deterrent effect to be achieved and can lead to a decline in the quality of transposition, in view of the fact that the Member States would be encouraged to transpose, no matter what, directives within the prescribed time limit.

82 The Republic of Bulgaria claims that such an approach is also contrary to the principle of proportionality and the duty of sincere cooperation.

83 In its response to the Commission's discontinuance in part, the Republic of Bulgaria submits that the Court has held, in paragraphs 78 and 79 of the judgment of 25 April 2024, *Commission* v *Poland (Whistleblowers directive)* (C-147/23, EU:C:2024:346), that that institution cannot rely on the principle of the equality of Member States before the Treaties, as enshrined in Article 4(2) TEU, to justify the automatic application of a single coefficient for seriousness where a directive is not transposed fully and, therefore, the measures necessary for its transposition are not notified. The consequences, for the private and public interests at stake, of Member States failing to comply with their obligations can vary not only from one Member State to another, but also depending on the normative content of the directive that has not been transposed. Therefore, the Commission cannot discharge its obligation to assess, in each Member State and in each specific case, the consequences of the failure established on private and public interests simply by automatically applying a coefficient for seriousness in the context of setting financial penalties, and to do so taking into account any mitigating or aggravating circumstances.

84 The Republic of Bulgaria claims that, in the present case, in determining the coefficient for seriousness, the Commission did not take into consideration either the nature of the social relationships concerned by the failure to transpose or a number of other mitigating circumstances, relied on by the Republic of Bulgaria during the written procedure.

2. Findings of the Court

85 The first subparagraph of Article 260(3) TFEU provides that, when the Commission brings a case before the Court pursuant to Article 258 TFEU on the grounds that the Member State concerned has failed to fulfil its obligation to notify measures transposing a directive adopted under a legislative procedure, that institution may, when it deems appropriate, specify the amount of the

lump sum or penalty payment to be paid by the Member State concerned which it considers appropriate in the circumstances. In accordance with the second subparagraph of Article 260(3) TFEU, if the Court finds that there is an infringement, it may impose a lump sum or penalty payment on the Member State concerned not exceeding the amount specified by the Commission, with the payment obligation taking effect on the date set by the Court in its judgment.

86 Since, as is apparent from paragraph 63 above, it is established that, on expiry of the period laid down in the reasoned opinion of 6 April 2022, the Republic of Bulgaria had neither adopted nor, accordingly, notified the Commission of the laws, regulations and administrative provisions necessary to transpose the provisions of Directive 2019/1161 into its domestic law, the infringement thus established comes within the scope of Article 260(3) TFEU.

87 It is settled case-law that, in order to assess whether it is appropriate for a financial penalty to be imposed, in each case, it is for the Court to determine, in the light of the circumstances of the case before it and according to the degree of persuasion and deterrence which appears to it to be required, the financial penalties that are appropriate, in particular, for preventing the recurrence of similar infringements of EU law (judgment of 25 April 2024, *Commission* v *Poland (Whistleblowers directive)*, C-147/23, EU:C:2024:346, paragraph 62 and the case-law cited).

88 It must be stated that all the legal and factual circumstances culminating in the breach of obligations established – namely, the complete lack of notification of the laws, regulations and administrative provisions necessary to transpose that directive before the expiry of the period laid down in the reasoned opinion of 6 April 2022 or even as at the date on which the present action was brought – indicate that if the future repetition of similar infringements of EU law is to be effectively prevented, a dissuasive measure must be adopted, such as a lump sum payment (see, to that effect, judgments of 25 February 2021, *Commission* v *Spain (Personal Data Directive – Criminal law)*, C-658/19, EU:C:2021:138, paragraph 70, and of 29 February 2024, *Commission* v *Ireland (Audiovisual media services)*, C-679/22, EU:C:2024:178, paragraph 73).

89 For the purposes of calculating the lump sum which a Member State can be ordered to pay pursuant to Article 260(3) TFEU, it is for the Court, in exercising its discretion, to fix the amount of the lump sum in an amount appropriate to the circumstances and proportionate to the failure to fulfil obligations. Relevant considerations in that respect include factors such as the seriousness of the failure to fulfil obligations, the length of time for which the failure has persisted and the relevant Member State's ability to pay (judgment of 25 April 2024, *Commission* v *Poland (Whistleblowers directive)*, C-147/23, EU:C:2024:346, paragraph 87 and the case-law cited).

90 As regards, first of all, the seriousness of the failure to fulfil obligations, that seriousness cannot be determined by the automatic application of a coefficient for seriousness (judgment of 25 April 2024, *Commission* v *Poland (Whistleblowers directive)*, C-147/23, EU:C:2024:346, paragraphs 79 and 88).

91 In order to examine the seriousness of the failure to fulfil obligations established in the present case, it must be recalled that the obligation to adopt provisions for the purposes of ensuring that a directive is transposed in full and the obligation to notify those measures to the Commission are fundamental obligations incumbent on the Member States in order to ensure optimal effectiveness of EU law and that failure to fulfil those obligations must, therefore, be regarded as definitely serious (judgment of 25 April 2024, *Commission* v *Poland (Whistleblowers directive)*, C-147/23, EU:C:2024:346, paragraph 72 and the case-law cited).

92 In the present case, it must be pointed out that Directive 2019/1161 is, as stated in recitals 2, 5, 8, 12 and 33 thereof, an important instrument of EU law inasmuch as it seeks to provide a demand-side stimulus for clean vehicles in support of a low-emission mobility transition in order, first, to lower vehicle CO_2 emissions and to reduce air and noise pollution, while supporting the decarbonisation of the transport sector, and second, to improve thereby the air quality in cities and other polluted areas, while contributing to the competitiveness and growth of Union industry in the increasing global markets for low- and zero-emission vehicles.

93 The failure to transpose the provisions of that directive necessarily undermines compliance with EU law and its uniform and effective application.

94 It is true that, as recalled in paragraph 56 above, the Republic of Bulgaria has argued, in its defence, that some of the concepts defined by Directive 2019/1161 already existed in the earlier national legislation, in particular the concepts of 'contracting authorities', 'contracting entities' and 'road transport vehicle', provided for by that directive.

95 However, as has been pointed out in paragraph 57 above, that directive not only amended the definitions of those three concepts set out in Article 4 of Directive 2009/33, as amended by Directive 2019/1161, but also defined two other concepts, namely that of 'clean vehicle' and that of 'zero-emission heavy duty vehicle'. The last two concepts are of fundamental importance in the light of the objectives of Directive 2019/1161 referred to in paragraph 92 above.

96 In addition, by adopting Directive 2019/1161, the EU legislature amended other provisions of Directive 2009/33.

97 As has been pointed out in paragraph 58 above, the Republic of Bulgaria has not shown that the existing national legislation ensured the implementation of all of the changes introduced by Directive 2019/1161.

98 Accordingly, the failure to adopt the laws, regulations and administrative provisions necessary for the transposition in full of that directive is serious.

99 Next, as regards the duration of the infringement, it is established that the Republic of Bulgaria had not, on expiry of the period for transposition laid down in Article 2 of Directive 2019/1161, namely 2 August 2021, adopted the laws, regulations and administrative provisions necessary to ensure the transposition of that directive and, accordingly, had also not notified them to the Commission.

100 As is apparent from the file before the Court, the Republic of Bulgaria transposed Directive 2019/1161 in full on 5 January 2024, the failure to fulfil obligations at issue having therefore lasted 885 days.

101 Lastly, as regards the determination of the Republic of Bulgaria's capacity to pay, according to the case-law of the Court, account must not be taken, in the method for calculating the 'n' factor, of the size of the population of that Member State, to the extent that the Commission did pursuant to the 2023 Communication (see, to that effect, judgment of 25 April 2024, *Commission* v *Poland (Whistleblowers directive)*, C-147/23, EU:C:2024:346, paragraphs 84 to 86 and 102).

102 On the other hand, the GDP of the Republic of Bulgaria must be taken as the predominant factor. In that regard, it is also necessary to take account of recent trends in that Member State's GDP at the time of the Court's examination of the facts (judgment of 13 June 2024, *Commission* v *Hungary (Reception of applicants for international protection II)*, C-123/22, EU:C:2024:493, paragraph 131).

103 In the light of those considerations and having regard to the discretion conferred on the Court by Article 260(3) TFEU, which provides that the Court cannot, in respect of the lump sum payment imposed by it, fix an amount exceeding that specified by the Commission, it must be stated that the effective prevention of the future repetition of infringements which are similar to that resulting from the infringement of Article 2 of Directive 2019/1161 and undermine the optimal effectiveness of EU law requires the imposition of a lump sum, the amount of which is to be set at EUR 1 593 000.

Costs

104 Under Article 138(1) of the Rules of Procedure, the unsuccessful party is to be ordered to pay the costs if they have been applied for in the successful party's pleadings. Since the Commission has applied for costs and the Republic of Bulgaria has been unsuccessful, the latter must be ordered to bear its own costs and to pay those incurred by the Commission.

On those grounds, the Court (Seventh Chamber) hereby:

1. **Declares that, by having failed, on the expiry of the period laid down in the reasoned opinion of the European Commission of 6 April 2022, to adopt the laws, regulations and administrative provisions necessary to comply with Directive (EU) 2019/1161 of the European Parliament and of the Council of 20 June 2019 amending Directive 2009/33/EC on the promotion of clean and energy-efficient road transport vehicles, and, accordingly, by having failed to notify them to the Commission, the Republic of Bulgaria has failed to fulfil its obligations under Article 2(1) of that directive;**

2. **Orders the Republic of Bulgaria to pay to the European Commission a lump sum in the amount of EUR 1 593 000;**

3. **Declares that the Republic of Bulgaria is to bear its own costs and pay those incurred by the European Commission.**

[Signatures]