



ENVIRONMENTAL ASPECTS IN THE CASE-LAW OF THE COURT OF JUSTICE OF THE EUROPEAN UNION UNDER ARTICLE 260(2) TFEU

Deimilė Prapiestytė *

Vilnius University, Faculty of Law, Lithuania

Abstract: This article explores how the European Commission ensures compliance with environmental obligations by Member States through infringement procedures, particularly under Article 260(2) TFEU. The analysis begins by outlining the legal framework governing non-compliance and financial penalties, focusing on the role of the Court of Justice of the European Union in sanctioning persistent breaches of environmental law. A review of selected judgments illustrates how the Court of Justice has applied financial penalties in cases involving waste management, air quality, and water protection. Special attention is given to the proportionality of fines and the reasoning behind the Commission's decision to initiate proceedings. The article also presents recent developments in 2024, including formal notices and actions brought against Greece and Portugal, drawing on data published by the Commission. These examples reveal that the timing and intensity of enforcement are often influenced by the complexity of the environmental issues at stake. The study concludes that while the Commission actively monitors and enforces environmental law, it adopts a flexible approach in certain cases, especially where compliance involves long-term infrastructural or administrative reform.

Keywords: Environmental law, Waste management, Air quality, European Commission, Infringement procedure, Court of Justice, Judgment of the Court establishing a failure to fulfil obligations, Non-compliance, Article 260(2) TFEU.

1. INTRODUCTION

In recent years, the European Union has set out ambitious plans in the fight against climate change, including in the field of environmental protection. The overarching goals are articulated in the European Commission's Communication the European Green Deal (European Commission, 2019), which – beyond environmental protection in the broad sense – also aims at climate neutrality, the promotion of a circular economy, clean industry, and climate justice and fairness.

A growing – albeit modest – increase in the number of cases heard by the Court of Justice of the European Union (CJEU, the Court of Justice, the Court) also reflects this trend. Over the past few years, there has been a gradual rise in cases concerning environmental issues,

* Corresponding author: deimile.prapiestyte@tf.vu.lt

Deimilė Prapiestytė, ORCID: 0009-0002-0854-7484

brought either through direct actions or references for a preliminary ruling. For instance, there were 23 such cases in both 2020 and 2021, 35 in 2022, 43 in 2023, and 44 in 2024 (Court of Justice of the European Union, n.d.-a).

In 2024, the distribution of environmental cases by procedural category was as follows: the majority were references for a preliminary ruling (28), followed by direct actions (15). However, the CJEU's published judicial statistics do not specify which direct actions – whether brought under Articles 263, 258 or 260(2) TFEU – pertained to environmental matters. Such categorisation would be useful for assessing how well Member States are implementing their environmental obligations in practice, and for identifying the areas in which they face the greatest challenges.

This article focuses on the Court of Justice, one of the courts comprising the CJEU. This clarification is necessary given that the General Court also has jurisdiction to hear direct actions, including those in the field of environmental protection (Court of Justice of the European Union, n.d.-b).

In the legal literature, several studies have addressed the infringement procedure under Article 260(2) TFEU. However, most of them do not focus on the subject matter of the action. For instance, Pohjankoski (2021), Schmidt and Bogdanowicz (2018), Tizzano (2015), and Van Rijn (2015) explore broader procedural or institutional aspects of the mechanism. By contrast, Coutron (2015), in his review of the CJEU's case-law, examines four judgments adopted under Article 260(2) TFEU – all of which concerned environmental protection. This underlines the significance of environmental enforcement in the practical application of Article 260(2) TFEU and further justifies the topical relevance of the present study.

The article begins, in Section 2, by examining the CJEU's case-law based on actions brought by the European Commission under Article 260(2) TFEU in the field of environmental protection. Then, in Section 4, in order to evaluate the potential preventive effect of these judgments, the article briefly reviews the number and trends of ongoing infringement procedures initiated by the Commission against Member States in this domain.

2. THE CASE LAW DEVELOPED IN THE APPLICATION OF ARTICLE 260(2) TFEU IN THE FIELD OF THE PROTECTION OF THE ENVIRONMENT

Article 260(2) TFEU provides the legal basis for imposing financial penalties on Member States that fail to comply with a judgment delivered under Article 258 TFEU. In the context of environmental protection, this mechanism serves as a crucial tool for reinforcing compliance with Union law. The case-law developed by the Court of Justice under this provision reveals the practical dimensions of enforcement and exposes the systemic challenges Member States face in fulfilling their environmental obligations.

Although the application of Article 260(2) remains relatively limited in scope, the environmental cases decided under this provision have contributed significantly to clarifying the criteria for determining penalties, the weight attached to environmental harm, and the role of proportionality in setting lump sums and periodic fines. These cases also demonstrate how persistent non-compliance in areas such as waste management, air quality, or water protection may lead to substantial sanctions, thereby highlighting the environmental sensitivity of the Union's infringement framework.

This section reviews the key environmental judgments rendered under Article 260(2) TFEU, with a particular focus on their legal reasoning, the aggravating or mitigating factors taken into account, and the broader implications for enforcement strategy within EU environmental law.

2.1. Key Environmental Judgments under Article 260(2) TFEU

Several key judgments of the Court of Justice under Article 260(2) TFEU illustrate how environmental obligations have become a central concern in enforcement practice. One landmark Case is C-196/13 *Commission v Italy*, in which the Court imposed both a lump sum (€40 million) and a daily penalty payment (€42.8 for each six month period of delay in taking the necessary measures) for Italy's failure to comply with a previous judgment concerning illegal waste disposal sites. The Court emphasised the gravity of the infringement, the duration of non-compliance, and the environmental and public health risks posed by the failure to fulfil obligations under the directives on waste (75/442/EEC), hazardous waste (91/689/EEC) and the landfill of waste (1999/31/EC) (CJEU, 2014a).

Similarly, in C-298/19, *Commission v Greece* (Pollution caused by Nitrates), the Court imposed a lump sum fine of €3,500,000 for Greece's failure to comply with a previous judgement concerning the inadequate implementation of the Nitrates Directive (91/676/EEC) (CJUE, 2020a).

These judgments demonstrate the Court's readiness to impose substantial financial sanctions where Member States persistently disregard environmental obligations. The proportionality of the fines, assessed in relation to the seriousness and duration of the breach, also sets a precedent for future applications of Article 260(2) TFEU in environmental cases.

Another important Case is C-278/01 *Commission v Spain*, concerning Spain's failure to ensure compliance with Directive 76/160/EEC on the quality of bathing water. The Court found that despite its previous ruling, Spain had not taken the necessary measures to meet minimum water quality standards at several coastal sites. Although this judgment predated the Lisbon Treaty and the formal articulation of Article 260(2) TFEU, it remains significant as one of the early instances in which environmental non-compliance was addressed through financial sanctions (CJEU, 2003).

More recently, in Case C-109/22 *Commission v Romania* (Closure of landfill), the Court imposes financial penalties on Romania for having failed to close down unauthorised landfills. In its judgment, the Court of Justice notes that Romania has still not closed 31 sites not authorised to be in operation. It orders Romania to pay a lump sum of €1.5 million and a penalty payment of €600 per landfill and per day of delay (CJUE, 2023).

Similarly, in Case C-318/23 *Commission v Slovenia* (Bukovžlak landfill), in order to prevent future infringements of EU law, the Court of Justice orders Slovenia to pay the Commission a lump sum of € 1 200 000 for having failed to comply with its obligations with regard to the landfilling of waste. In order to set that amount, the Court took into consideration the relevant factors in that respect, such as the seriousness and duration of the infringements found as well as Slovenia's ability to pay. As regards the seriousness, the Court has noted that the failure fully to comply with its judgment of 16 July 2015 must be regarded as particularly serious since it gave rise to significant risks to the environment and human health, especially (CJEU, 2025).

Together, these judgments illustrate the CJEU's evolving approach to environmental enforcement under Article 260(2) TFEU. They reflect a gradual shift towards stricter accountability and the use of financial sanctions as a deterrent mechanism when Member States persistently fail to uphold environmental standards.

3. METHODOLOGY

This research employs classical scientific methods typical for legal analysis. These include the logical-systematic method, used to structure and assess the functioning of Article 260(2) TFEU within the broader framework of EU environmental law; legal act analysis, applied to the relevant provisions of the Treaty on the Functioning of the European Union; and jurisprudential analysis, used to examine the Court of Justice's decisions in cases involving persistent non-compliance in the environmental field. Furthermore, a comparative approach is employed to identify patterns across different Member States, while descriptive and interpretive analysis of official infringement data published by the European Commission supports the discussion of recent trends and enforcement challenges.

4. RESULTS AND DISCUSSION

This section presents and discusses the main findings related to infringement procedures initiated by the European Commission in the field of environmental protection. It focuses on trends in the application of Articles 258 and 260(2) TFEU, highlighting the scale and distribution of recent formal notices, the nature of the environmental breaches involved, and the use of financial sanctions. Drawing on official Commission data, selected judgments of the Court of Justice, and relevant EU directives, the section explores both the practical implementation challenges faced by Member States and the legal implications of non-compliance with environmental obligations.

4.1. General Trends and 2024 Data Overview

Although European Commission data suggests that the overall number of infringement procedures in the field of environmental protection has decreased – dropping from 425 in 2022 to 293 in 2023 (European Commission, 2024a) – the 2024 figures paint a more nuanced picture. According to the Commission's publicly available records, in 2024, a total of 66 formal notices were issued under Article 258 TFEU in the field of environment policy. These were addressed to various Member States, some of which received multiple notices: Hungary (5), Italy and Portugal (6 each), while others such as Latvia, Lithuania, and Luxembourg received only one.

The majority of formal notices concerned poor application of existing directives, including the Environmental Noise Directive (Directive 2002/49/EC), the Urban Wastewater Directive (Directive 91/271/EEC), and the WEEE Directive (Directive 2012/19/EU). Furthermore, initial formal notices were also issued in connection with more recent EU environmental legislation. For example, Italy was found to have incorrectly transposed Directive (EU) 2019/904 on single-use plastics; Sweden failed to notify national implementing measures for the Drinking Water Directive (EU) 2020/2184 (European Commission, 2024b).

4.2. Use of Article 260(2) TFEU in 2024

Notably, in 2024, the Commission sent formal notices under Article 260(2) TFEU to four Member States – Italy, Portugal, France, and Ireland – for failure to comply with judgments of the Court of Justice. In Case C-636/18 (Commission v France [(Exceedance of limit values for nitrogen dioxide)]), the Court had found France in breach of its obligations under Directive 2008/50/EC on ambient air quality due to exceedance of nitrogen dioxide limits (CJEU, 2019). Similar rulings were handed down in Case C-637/18 (Commission v Hungary) (CJUE, 2021)

and Case C-644/18 (Commission v Italy) (CJUE, 2020b), both concerning persistent violations of PM10 limit values under the same directive.

In addition, two actions were filed in 2024 before the CJEU under Article 260(2) TFEU – against Greece (C-368/24) and Portugal (C-613/24). In the Greek case, the Commission alleged continued non-compliance with the 2014 judgment in Case C-600/12, which had found Greece in breach of obligations under Directive 1999/31/EC and Directive 2008/98/EC regarding the management and closure of the Zakynthos landfill. The Commission now seeks a lump sum of EUR 2 050 per day for the period between delivery of the judgment in Case C-600/12 and the date of compliance by the Greece with that judgment or delivery of the judgment in Case C-368/24, whichever is earlier, the minimum lump sum payable being EUR 1 148 000; plus EUR 18,450 per day for continued non-compliance (European Commission, 2024c).

In Case C-613/24 (Commission v Portugal), the Commission contends that Portugal failed to take necessary measures to comply with the 2019 judgment in Case C-290/18, concerning the designation of special areas of conservation under Directive 92/43/EEC. The Commission has asked the Court to impose a lump sum of EUR 8,202,816 and a daily penalty of EUR 45,543 until compliance is achieved (CJEU, 2019b).

4.3. Discussion: Delay, Discretion, and Practical Considerations

These cases reveal not only the range of environmental issues at stake, but also the Commission's discretionary approach. For instance, in Commission v Greece, a decade passed between the original judgment and the Commission's Article 260(2) action, whereas in Commission v Portugal, enforcement followed within five years. The comparison suggests that the time required to comply with CJEU rulings in environmental matters can vary significantly, often depending on the complexity of the subject matter – particularly in areas such as waste management and habitat conservation.

As Coutron (2015) notes, enforcement under Article 260(2) often reflects broader systemic challenges in Member States' administrative and environmental governance. Hence, the need for flexibility may coexist with the risk of delayed enforcement. It may be concluded that the fulfilment of environmental obligations frequently requires not only legal precision but also substantial time, resources, and institutional coordination.

5. CONCLUSION

The European Commission plays an active and effective role in monitoring how Member States implement their obligations in the field of environmental protection. By issuing formal notices as a first step, the Commission seeks to prevent ongoing non-compliance in sensitive areas such as waste management, chemicals, air quality, and water protection.

In situations where the Court of Justice has already delivered a judgment under Article 258 TFEU and found that a Member State has failed to fulfil its obligations in the field of environmental law, the Commission appears to assess the complexity of the specific area of non-compliance before initiating further proceedings for failure to comply with the Court's ruling. This suggests a calibrated enforcement approach that considers both the seriousness of the breach, and the practical difficulties associated with compliance.

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