

JUDGMENT OF THE COURT (Sixth Chamber)

1 August 2025 (*)

(Failure of a Member State to fulfil obligations – Article 258 TFEU – Work-life balance for parents and carers – Directive (EU) 2019/1158 – Article 20(1) – Failure to transpose and notify transposition measures – Article 260(3) TFEU – Application for the imposition of a lump sum – Criteria for establishing the amount of the penalty)

In Case C-69/24,

ACTION for failure to fulfil obligations under Article 258 and Article 260(3) TFEU, brought on 30 January 2024,

European Commission, represented by J. Norris and E. Schmidt, acting as Agents,

applicant,

v

Ireland, represented by M. Browne, Chief State Solicitor, S. Finnegan and A. Joyce, acting as Agents, and by C. Toland, Senior Counsel, and S. Brittain Barrister-at-Law,

defendant,

THE COURT (Sixth Chamber),

composed of A. Kumin, President of the Chamber, F. Biltgen (Rapporteur), President of the First Chamber, and I. Ziemele, Judge,

Advocate General: J. Kokott,

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 action, the European Commission claims that the Court should:
- declare that, by failing to adopt the laws, regulations and administrative provisions necessary to comply with Directive (EU) 2019/1158 of the European Parliament and of the Council of 20 June 2019 on work-life balance for parents and carers and repealing Council Directive 2010/18/EU (OJ 2019 L 188, p.79), or, in any event, by failing to communicate them to the Commission, Ireland has failed to fulfil its obligations under Directive 2019/1158;
 - order Ireland to pay to the Commission a lump sum corresponding to the higher of the following amounts:
 - a daily amount of EUR 3 300 multiplied by the number of days that the infringement has persisted between the day after the time limit for transposition set out in Directive 2019/1158 expired and the date the infringement comes to an end or, failing compliance, the date of delivery of the judgment in the present case under Article 260(3) TFEU; or
 - a minimum lump sum of EUR 1 540 000;
 - if the failure to fulfil the obligations found in the first indent has continued until the date on which the judgment is rendered in the present case, order Ireland to pay to the Commission a penalty payment of EUR 14 850 per day from the date on which the judgment is rendered to the date of compliance with its obligations under Directive 2019/1158; and
 - order Ireland to pay the costs.

Legal context

Directive 2019/1158

- 2 Recitals 6, 11, 12 and 16 of Directive 2019/1158 state:

‘(6) Work-life balance policies should contribute to the achievement of gender equality by promoting the participation of women in the labour market, the equal sharing of caring responsibilities between men and women, and the closing of the gender gaps in earnings and pay. ...

...

(11) The current [EU] legal framework provides limited incentives for men to assume an equal share of caring responsibilities. ... The imbalance in the design of work-life balance policies between women and men reinforces gender stereotypes and differences between work and care. ... Furthermore, the use of work-life balance

arrangements by fathers, such as leave or flexible working arrangements, has been shown to have a positive impact in reducing the relative amount of unpaid family work undertaken by women and leaving them more time for paid employment.

- (12) In implementing this Directive, Member States should take into consideration that the equal uptake of family-related leave between men and women also depends on other appropriate measures, such as the provision of accessible and affordable childcare and long-term care services, which are crucial for the purpose of allowing parents, and other persons with caring responsibilities to enter, remain in, or return to the labour market. ...

...

- (16) This Directive lays down minimum requirements related to paternity leave, parental leave and carers' leave, and to flexible working arrangements for workers who are parents, or carers. By facilitating the reconciliation of work and family life for such parents and carers, this Directive should contribute to the Treaty-based goals of equality between men and women with regard to labour market opportunities, equal treatment at work and the promotion of a high level of employment in the [European] Union.

...'

3 Under Article 1 of that directive:

'This Directive lays down minimum requirements designed to achieve equality between men and women with regard to labour market opportunities and treatment at work, by facilitating the reconciliation of work and family life for workers who are parents, or carers.

...'

4 Article 9 of the directive, entitled 'Flexible working arrangements', is worded as follows:

1. Member States shall take the necessary measures to ensure that workers with children up to a specified age, which shall be at least eight years, and carers, have the right to request flexible working arrangements for caring purposes. The duration of such flexible working arrangements may be subject to a reasonable limitation.

2. Employers shall consider and respond to requests for flexible working arrangements as referred to in paragraph 1 within a reasonable period of time, taking into account the needs of both the employer and the worker. Employers shall provide reasons for any refusal of such a request or for any postponement of such arrangements.

3. When flexible working arrangements as referred to in paragraph 1 are limited in duration, the worker shall have the right to return to the original working pattern at the end of the agreed period. The worker shall also have the right to request to return to the original

working pattern before the end of the agreed period where justified on the basis of a change of circumstances. The employer shall consider and respond to a request for an early return to the original working pattern, taking into account the needs of both the employer and the worker.

4. Member States may make the right to request flexible working arrangements subject to a period of work qualification or to a length of service qualification, which shall not exceed six months. In the case of successive fixed-term contracts within the meaning of [Council Directive 1999/70/EC of 28 June 1999 concerning the framework agreement on fixed-term work concluded by ETUC, UNICE and CEEP (OJ 1999 L 175, p. 43)] with the same employer, the sum of those contracts shall be taken into account for the purpose of calculating the qualifying period.’

5 Under Article 20(1) of Directive 2019/1158, Member States were required to bring into force the laws, regulations and administrative provisions necessary to comply with that directive by 2 August 2022 and immediately inform the Commission thereof.

The 2023 Communication

6 Communication 2023/C 2/01 from the Commission, entitled ‘Financial sanctions in infringement proceedings’ (OJ 2023 C 2, p. 1; ‘the 2023 Communication’), lays down, in points 3 and 4 thereof, the rules on ‘penalty payment’ and ‘lump sum payment’ respectively.

7 Point 3.2 of that communication, which concerns the application of the coefficient for seriousness when calculating the daily penalty payment, provides:

‘An infringement concerning a ... failure to notify measures transposing a directive adopted under a legislative procedure is always considered serious. To adapt the amount of the penalty to the specific circumstances of the case, the Commission determines the coefficient for seriousness on the basis of two parameters: the importance of the Union rules breached or not transposed and the effects of the infringement on general and particular interests.

...’

8 Point 3.2.2 of that communication states:

‘For actions brought under Article 260(3) TFEU, the Commission systematically applies a coefficient for seriousness of 10 in case of a complete failure to notify transposition measures. 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.

In the case of a partial failure to notify transposition measures, the importance of the transposition gap is to be considered when setting the coefficient for seriousness which is lower than 10. In addition, the effects of the infringement on general and particular interests may be taken into account ...’

9 Point 3.4 of that communication, entitled ‘Member State’s capacity to pay’, provides:

‘ ...

The level of sanction required to serve as a deterrent will vary according to Member States’ capacity to pay. This deterrent effect is reflected in the n factor. It is defined as a weighted geometric average of the gross domestic product (GDP) of the Member State concerned compared to the average of the Member States’ GDPs, with a weight of two, and of the population of the Member State concerned, compared to the average of Member States’ populations, with a weight of one. This represents the capacity to pay of the Member State concerned in relation to the other Member States’ capacity to pay:

$$\text{n factor} = \left(\frac{\text{GDP}_n}{\text{GDP}_{\text{avg}}} \right)^{2/3} \times \left(\frac{\text{Pop}_n}{\text{Pop}_{\text{avg}}} \right)^{1/3}$$

...’

The Commission has ... decided to revise its method for calculating the n factor, which now predominantly relies on Member States’ GDP and secondarily on their population as a demographic criterion allowing a reasonable deviation between the various Member States to be maintained. Taking into account Member States’ population for one third of the calculation of the n factor reduces to a reasonable degree the variation of Member States’ n factors, as compared to a calculation based solely on Member States’ GDP. It also adds an element of stability in the calculation of the n factor, since population is unlikely to vary significantly on an annual basis. In contrast, a Member State’s GDP might experience higher annual fluctuations, in particular in periods of economic crisis. At the same time, since the Member State’s GDP still accounts for two thirds of the calculation, it remains the predominant factor for the purposes of assessing its capacity to pay.

...’

10 Point 4.2 of the 2023 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 ...

...’

11 Point 4.2.1 of that communication provides:

‘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.

...’

12 According to point 4.2.2 of that 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 the Annex I.

...’

13 Annex I to that communication, entitled ‘Data used for determining financial sanctions proposed to the Court’, provides, in point 2 thereof, that the flat-rate amount for the lump sum payment mentioned in point 4.2.2 of the 2023 Communication is fixed at EUR 1 000 per day, and, in point 3 thereof, that the ‘n’ factor for Ireland is 0.55. In point 5 of that Annex I, it is stated that the minimum lump sum for that Member State is set at EUR 1 540 000.

Pre-litigation procedure

14 Having received no notification from Ireland concerning the adoption of the provisions necessary to transpose Directive 2019/1158 into national law, the Commission sent a letter of formal notice to Ireland on 20 September 2022.

15 In its reply of 22 November 2022, Ireland informed the Commission that it had adopted measures ensuring partial transposition of that directive and that the remaining transposition measures provided for under the Work Life Balance and Miscellaneous Provisions Bill were in the process of being adopted, which was scheduled for early 2023.

16 On 19 April 2023, the Commission sent a reasoned opinion to Ireland, in which it invited

that Member State to take the necessary measures to comply with the requirements of Directive 2019/1158 within a period of two months of receipt of that opinion.

- 17 By letter of 19 June 2023, Ireland replied that it did not dispute the alleged infringement, while stating that the Work Life Balance and Miscellaneous Provisions Act 2023 intended to transpose that directive had been adopted. Furthermore, it provided a concordance table concerning the articles of Directive 2019/1158 and the corresponding national provisions, from which it was apparent that that directive had not yet been fully transposed.
- 18 In a letter of 24 July 2023, Ireland informed the Commission of further progress in transposing that directive, while acknowledging that Article 9 thereof had still not been transposed into national law.
- 19 In subsequent correspondence, Ireland confirmed that the Work Life Balance and Miscellaneous Provisions Act 2023 had been enacted, but that a code of practice was still in the process of being drawn up in view of the taking of effect of that act.
- 20 Taking the view that that Member State had still not complied with its obligations, the Commission, on 30 January 2024, brought the present action before the Court.

The developments which took place in the course of the proceedings before the Court

- 21 By letter of 20 March 2024, the Commission informed the Court of the fact that, following a communication received from Ireland dated 7 March 2024, stating that the code of practice intended to implement the right, under Article 9 of Directive 2019/1158, to request flexible working arrangements for workers who are parents or carers had taken effect on 6 March 2024, the transposition of that directive by that Member State could be considered complete.
- 22 Consequently, the Commission withdrew its request to impose a penalty payment, which had become devoid of purpose.
- 23 As regards the imposition of a lump sum, the Commission requests that the amount be set at EUR 1 917 300, being the result of the multiplication of an amount of EUR 3 300 by 581 days, which correspond to the period between the day following the last day of the deadline for transposition of Directive 2019/1158, that is to say 3 August 2022, and the day preceding the date of entry into force of the transposition measures, that is to say 5 March 2024.

The action

Failure to fulfil obligations under Article 258 TFEU

Arguments of the parties

- 24 The Commission points out that, in accordance with the third paragraph of Article 288 TFEU, Member States are bound by the directive as to the result to be achieved and are required to adopt the provisions necessary to transpose directives into their national legal system, within the periods laid down in those directives, and to notify those provisions to it immediately.
- 25 That institution explains that the question whether a Member State has failed to fulfil those obligations must be determined by reference to the situation prevailing in that Member State at the end of the period laid down in the reasoned opinion which the Commission addressed to that Member State.
- 26 The Commission argues that, in the present case, Ireland had not adopted all the provisions necessary to transpose Directive 2019/1158 on expiry of the period laid down in the reasoned opinion nor had it adopted them by the date on which the present action was brought.
- 27 In addition, the Commission states that Ireland does not dispute the alleged infringement, but, on the contrary, explicitly acknowledges it. The Commission therefore concludes that that Member State has failed to fulfil its obligations under Article 20 of Directive 2019/1158.
- 28 Ireland acknowledges that it has failed to fulfil its obligation to adopt all the necessary transposition measures by the date laid down in Directive 2019/1158. However, it relies on certain circumstances in order to justify the delay in transposing that directive into its domestic legal order. First, it engaged in continuous and intensive dialogue with the social partners to reach an agreement as to the proper parameters of the right to request flexible working arrangements for workers who are parents or carers. Second, that Member State stresses the importance of a code of practice being drawn up which, while not a specific requirement for the transposition of Article 9 of Directive 2019/1158, would significantly enhance the practical implementation of the rights conferred by that directive.

Findings of the Court

- 29 Under Article 20(1) of Directive 2019/1158, Member States were to bring into force the laws, regulations and administrative provisions necessary to comply with that directive by 2 August 2022 and immediately inform the Commission thereof.
- 30 In accordance with 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 reasoned opinion, the Court being unable to take account of any subsequent changes (judgment of 6 March 2025, *Commission v Germany (Whistleblowers directive)*, C-149/23, EU:C:2025:145, paragraph 45 and the case-law cited).
- 31 In the case at hand, after having found that Ireland had not notified it of the provisions

necessary to transpose Directive 2019/1158, the Commission sent that Member State a reasoned opinion on 19 April 2023, calling on it to comply with the obligations referred to therein within a period of two months of receipt of the opinion.

32 However, as is apparent from the defence and the rejoinder lodged by Ireland in the present proceedings, as of the expiry of that period, Ireland had not adopted the laws, regulations and administrative provisions necessary to comply with Directive 2019/1158 nor, consequently, had that Member State notified them to the Commission on expiry of that period.

33 In order to justify the delay in adopting the provisions necessary to transpose that directive, Ireland relies on discussions with the social partners with a view to reaching an agreement as to the practicalities of flexible working arrangements for workers who are parents or carers and the drawing-up of a code of practice for employers and employees to facilitate the practical implementation of the rights and obligations arising from that directive.

34 Such arguments cannot justify the failure to fulfil obligations complained of by the Commission.

35 According to the Court's settled case-law, 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 (judgment of 6 March 2025, *Commission v Germany (Whistleblowers directive)*, C-149/23, EU:C:2025:145, paragraph 49 and the case-law cited).

36 In addition, as provided in Article 20(1) of Directive 2019/1158, the EU legislature took the view that a three-year deadline for transposition was sufficient to enable the Member States to fulfil their obligations.

37 In that respect, it should be borne in mind that if the period allowed for the transposition of a directive proves to be too short, the only means of action compatible with EU law available to the Member State concerned consists in taking the appropriate initiatives to obtain the necessary extension of the period by the competent institution (see, to that effect, judgment of 16 July 2020, *Commission v Ireland (Anti-money laundering)*, C-550/18, EU:C:2020:564, paragraph 85).

38 However, Ireland does not claim to have taken the appropriate initiatives to obtain such an extension.

39 It must therefore be held that, by failing, on expiry of the period laid down in the reasoned opinion, to adopt the laws, regulations and administrative provisions necessary to comply with Directive 2019/1158 and, therefore, by failing to notify them to the Commission, Ireland has failed to fulfil its obligations under Article 20(1) of that directive.

Request under Article 260(3) TFEU

Arguments of the parties

- 40 Taking the view that the failure to fulfil obligations alleged against Ireland, in particular the failure to notify the measures transposing Article 9 of Directive 2019/1158, persisted as at the date on which the Commission brought the matter before the Court, that institution proposes, on the basis of Article 260(3) TFEU, that a lump sum be imposed on that Member State.
- 41 For the purpose of setting the amount of the lump sum, the Commission refers to the general principles set out in point 2 of the 2023 Communication and the method of calculation set out in points 3 and 4 of that communication. In particular, that institution states that the amount of the lump sum is to be determined by reference to the following basic criteria: seriousness of the infringement, duration and the need to ensure that the penalty has a deterrent effect in order to prevent the recurrence of similar infringements of EU law.
- 42 With regard, in the first place, to the seriousness of the infringement, the Commission recalls that the applicable coefficient under the 2023 Communication is between a minimum of 1 and a maximum of 20. The Commission specifies that, for actions brought under Article 260(3) TFEU, a coefficient for seriousness of 10 is systematically applied in case of a complete failure to notify the measures transposing a directive. In the event of a partial failure to fulfil that obligation, the coefficient for seriousness may be less than 10, but the length of the delay in transposition concerned should be taken into account when setting that coefficient. In addition, account should be taken of the effects of the infringement on general and particular interests. In that context, the number of provisions of a directive which have not yet been transposed into national law and their importance are decisive factors, as are the economic or other harm suffered by individuals and economic operators, the size of the population affected by the infringement and the geographical area concerned.
- 43 The Commission notes that, in the present case, Article 9 of Directive 2019/1158 imposes on Member States a clear obligation to ensure that workers can exercise their right to request flexible working arrangements, including remote working arrangements, flexible working hours and reduced working time. According to the Commission, that article is a main provision of that directive, which seeks to extend and strengthen the rules previously established by Council Directive 2010/18/EU of 8 March 2010 implementing the revised Framework Agreement on parental leave concluded by BUSINESSEUROPE, UEAPME, CEEP and ETUC and repealing Directive 96/34/EC (OJ 2010 L 68, p. 13), in order to encourage workers who are parents or carers to remain on the labour market.
- 44 As regards the geographic scope of the infringement at issue, the Commission states that it affects the workforce across the whole of Ireland, which considerably increases the seriousness of that infringement.
- 45 In the light of the factors set out in paragraphs 43 and 44 above, the Commission proposes

that a coefficient for seriousness of 6 be applied.

- 46 In the second place, as regards the duration of the infringement, the Commission notes that that amounts, as regards the calculation of the lump sum, to the number of days the infringement persists. That period is calculated in accordance with point 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 set out in the directive and the date the infringement comes to an end or, failing compliance, the date on which the judgment in the present case is delivered under Article 260(3) TFEU.
- 47 As regards, in the third place, the ‘n’ factor, which relates to the need to ensure that the penalty has a deterrent effect, the Commission states that that factor takes into account the capacity to pay of the Member State in question, as defined in the 2023 Communication, according to which the determination of that factor predominantly relies on the Member States’ GDP and, secondarily, on their population, as a demographic criterion allowing a reasonable deviation between the various Member States to be maintained. As regards Ireland, the ‘n’ factor is fixed at 0.55.
- 48 Thus, as regards the calculation of the lump sum, the Commission proposes multiplying the basic amount of the lump sum fixed in point 2 of Annex I to that communication at EUR 1 000 per day by the coefficient for seriousness of 6 and the ‘n’ factor of 0.55, amounting to EUR 3 300, to be multiplied by the number of days the infringement has persisted, in accordance with point 4.2.1 of the communication. The Commission states that the payment of that lump sum is to be imposed, provided that it is greater than EUR 1 540 000, which is the minimum lump sum fixed for Ireland under point 5 of Annex I to the 2023 Communication.
- 49 In its defence, Ireland contends that the delay in transposing Directive 2019/1158 is not sufficiently serious to justify the imposition of a financial sanction of the magnitude proposed by the Commission. It argues that the Commission itself acknowledges that the alleged failure to fulfil obligations concerns only Article 9 of that directive.
- 50 According to Ireland, it would be an egregious, unfair and manifestly disproportionate misuse of the procedure laid down in Article 260(3) TFEU for a short delay in the formal and technical transposition of Directive 2019/1158 to be penalised.
- 51 In any event, Ireland claims that the Commission failed to take account of a number of factors in assessing the seriousness of the infringement in question.
- 52 As regards, first, the extent of the transposition of Directive 2019/1158, Ireland observes it had substantially transposed the provisions of the directive by the date set therein and that the remaining provisions of that directive, with the exception of Article 9 thereof, had been transposed by the date on which the present action was brought, with the result that the Commission is, in fact, seeking to apply for a retroactive penalty for the latter provisions.

- 53 Second, Ireland submits that it fully cooperated with the Commission, informing that institution of the difficulties it had experienced in transposing Directive 2019/1158, keeping it informed of the efforts made to transpose further that directive, reiterating its regret regarding the delay in transposition and providing a concordance table concerning the articles of that directive and the corresponding national provisions.
- 54 Third, Ireland takes the view that, while the objective of Directive 2019/1158, namely, the promotion of equality between men and women, may be regarded as a fundamental principle of EU law, the effect of the right to request flexible working arrangements under Article 9 of that directive will not be immediate but that right seeks to bring about a change in workplace culture over time.
- 55 Fourth, the work done, in particular by the Irish authorities, has resulted not merely in ‘paper’ transposition of the obligation laid down in Article 9 but in a meaningful legal regime which guarantees the effective exercise of the rights of workers to flexible working arrangements. In addition, Ireland submits that the delay in transposing Directive 2019/1158 did not have a significant effect on public and private interests, especially since that Member State did not merely implement Article 9 of that directive, but went beyond the requirements of that directive, by conferring, inter alia, the right to request flexible working arrangements, including remote working arrangements, not only on workers with children, but on all employees, and by increasing the age limit as regards the benefit of those arrangements and the grant of parental leave.
- 56 In its reply, the Commission contends that none of the arguments put forward by Ireland allows the Court to exempt that Member State from the imposition of a lump sum or to reduce significantly the sums which it has claimed on the basis of the 2023 Communication.
- 57 As regards the arguments put forward by Ireland relating to the assessment of the seriousness of the infringement established, the Commission denies that they can justify a significant reduction in the amount of the lump sum sought. First, given that the failure to transpose Directive 2019/1158 concerns fundamental obligations of that directive, the failure to fulfil obligations should be regarded as definitely serious. Second, the assessment of the seriousness of the infringement is not solely qualitative, in so far as it takes account of the partial or full extent of the infringement and the effects of the infringement on general and particular interests. Third, the cooperation of a Member State which consists merely in exchanging correspondence with the Commission services to confirm that the transposition of Directive 2019/1158 was delayed does not show that State’s intention to comply within the shortest time possible with the provisions of that directive, which may be taken into account as a mitigating circumstance in the context of assessing the seriousness of the infringement. Fourth, the argument that Ireland had done more than just a ‘paper’ transposition of that directive is beside the point, since the Member States are under an obligation to ensure full transposition of directives.
- 58 For all intents and purposes, the Commission emphasises the importance of the

transposition of Article 9 of Directive 2019/1158, in particular in Ireland, with regard, inter alia, to early childhood education and care services for children under the age of three, the costs of childcare, the employment gap between women and men in that Member State and the fact that more than half of Irish women with young dependent children are unable to work because of the responsibilities they must assume in respect of children.

59 As regards the method of establishing the ‘n’ factor used in the 2023 Communication, which was invalidated by the judgment of 25 April 2024, *Commission v Poland (Whistleblowers directive)* (C-147/23, EU:C:2024:346), in so far as it takes account of a demographic criterion in order to determine the capacity to pay of the Member State concerned, the Commission is of the view that that method should nevertheless be applied, since it has not been possible to assess the consequences to be inferred from that judgment.

60 In its rejoinder, Ireland contends, first of all, that Directive 2019/1158 does not address childcare costs and that the percentage of Irish women making use of remote working arrangements was the highest in the European Union in 2022. Next, it is apparent from a 2021 report by the Organisation for Economic Co-operation and Development (OECD) that the most substantial reduction in childcare costs since 2019 occurred in Ireland. Lastly, Ireland claims that the low take-up of childcare services in Ireland is a product of the extraordinary success which it has achieved in creating access to remote working arrangements.

Findings of the Court

61 It must be borne in mind that 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 ground that the Member State concerned has failed to fulfil its obligation to notify measures transposing a directive adopted under a legislative procedure, it 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.

62 Since, as is apparent from paragraph 39 above, it is established that, on expiry of the period laid down in the reasoned opinion, Ireland had neither adopted nor, consequently, notified to the Commission the laws, regulations and administrative provisions necessary to transpose the provisions of Directive 2019/1158 into domestic law, the Court finds that that failure falls within the scope of Article 260(3) TFEU.

63 Furthermore, it should be recalled that the objective pursued by the system set out in Article 260(3) TFEU is not only to induce Member States to put an end as soon as possible to a breach of obligations which, in the absence of such a measure, would tend to persist, but also to simplify and speed up the procedure for imposing financial penalties for failures

to comply with the obligation to notify national provisions transposing a directive adopted through a legislative procedure (judgment of 6 March 2025, *Commission v Germany (Whistleblowers directive)*, C-149/23, EU:C:2025:145, paragraph 80 and the case-law cited).

64 In order to achieve that objective, Article 260(3) TFEU provides for the imposition, inter alia, of a lump sum as a financial penalty.

65 The imposition of a lump sum is based on an 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 (judgment of 6 March 2025, *Commission v Germany (Whistleblowers directive)*, C-149/23, EU:C:2025:145, paragraph 82 and the case-law cited).

66 In that regard, the Commission states reasons for the nature and amount of the financial penalty sought, taking into account the guidelines which it has adopted, such as those in its communications which, although not binding on the Court, contribute to ensuring that the action brought by the Commission is transparent, foreseeable and consistent with legal certainty (judgment of 6 March 2025, *Commission v Germany (Whistleblowers directive)*, C-149/23, EU:C:2025:145, paragraph 83 and the case-law cited).

67 As regards whether it is appropriate for a lump sum 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 6 March 2025, *Commission v Germany (Whistleblowers directive)*, C-149/23, EU:C:2025:145, paragraph 84 and the case-law cited).

68 In the case at hand, all the legal and factual elements surrounding the breach of obligations established 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 the imposition of a lump sum. In that regard, it should be noted that, on expiry of the period laid down in Article 20(1) of Directive 2019/1158, no law, regulation or administrative provision enabling effective transposition of that directive had been notified to the Commission and it was only on expiry of the period laid down in the reasoned opinion that Ireland provided a concordance table concerning the articles of that directive and the corresponding national provisions, from which it was apparent that that directive had not yet been fully transposed.

69 That assessment is not called into question by the arguments put forward by Ireland as set out in paragraphs 51 to 55 above that the delay in transposing Directive 2019/1158 was not significant and that the failure to transpose concerned only a purely formal article or one with a technical content, with the result that the present action would be an egregious, unfair and manifestly disproportionate misuse of the procedure laid down in Article 260(3) TFEU.

- 70 It should be borne in mind that notification of measures transposing a directive is not to be regarded as a purely formal question (see, to that effect, judgment of 14 March 2024, *Commission v Latvia (European Electronic Communications Code)*, C-454/22, EU:C:2024:235, paragraph 89 and the case-law cited).
- 71 Furthermore, while the extent of the infringement and its duration are relevant for assessing the seriousness thereof for the purposes of calculating the amount of the lump sum, they cannot, however, be relevant for the purpose of assessing whether it is appropriate to impose such a penalty (see, to that effect, judgment of 14 March 2024, *Commission v Latvia (European Electronic Communications Code)*, C-454/22, EU:C:2024:235, paragraph 88).
- 72 In any event, it is not disputed that the Work Life Balance and Miscellaneous Provisions Act 2023 intended to transpose most of the provisions of Directive 2019/1158 was adopted not at the end of the period prescribed by Article 20(1) of that directive, but only 10 months after the expiry of that period.
- 73 Under no circumstances can recourse to proceedings for failure to fulfil obligations under Article 260(3) TFEU be described as an egregious, unfair and manifestly disproportionate misuse, since it is for the Commission to bring an action for failure to fulfil obligations under that provision in all cases where it considers that a failure to fulfil obligations falls within the scope of that provision.
- 74 As regards the calculation of the amount of the lump sum, it should be recalled that, under Article 260(3) TFEU, the Court alone has the power to impose a financial penalty on a Member State. However, in the context of proceedings brought on the basis of that provision, the Court has only a limited power to assess, since, where it finds that there is a failure to fulfil obligations, the Commission's proposals are binding on it as to the nature of the financial penalty which the Court may impose and the maximum amount of the penalty which it may set (judgment of 6 March 2025, *Commission v Germany (Whistleblowers directive)*, C-149/23, EU:C:2025:145, paragraph 86 and the case-law cited).
- 75 In exercising its discretion in the matter, as delimited by the Commission's proposals, it is for the Court, as has been recalled in paragraph 67 above, to fix the amount of the lump sum which a Member State may be ordered to pay pursuant to Article 260(3) TFEU, 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 6 March 2025, *Commission v Germany (Whistleblowers directive)*, C-149/23, EU:C:2025:145, paragraph 87 and the case-law cited).
- 76 It should likewise be remembered that, as stated in paragraph 66 above, in the context of that discretion, guidelines such as communications from the Commission are not binding on the Court but rather contribute to ensuring that the Commission's own actions are

transparent, foreseeable and consistent with legal certainty when that institution makes proposals to the Court (judgment of 6 March 2025, *Commission v Germany (Whistleblowers directive)*, C-149/23, EU:C:2025:145, paragraph 88 and the case-law cited).

77 In the present case, the Commission relied on the 2023 Communication to justify its request that Ireland be ordered to pay a lump sum, and to fix the amount thereof.

78 As regards, in the first place, the seriousness of the infringement, it should be borne in mind that the obligation to adopt national measures for the purposes of ensuring that a directive is transposed in full and the obligation to notify them 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 6 March 2025, *Commission v Germany (Whistleblowers directive)*, C-149/23, EU:C:2025:145, paragraph 92 and the case-law cited).

79 In the present case, the Commission proposed, on the basis of the effects of the infringement at issue on general and particular interests, the application of a coefficient for seriousness of 6, which is disputed by Ireland.

80 In that regard, it should be noted, as the Commission has done, that Directive 2019/1158 is an important piece of legislation in the field of achieving equality between men and women in order to achieve gender equality with regard to labour market opportunities and treatment at work.

81 Under Article 1 of Directive 2019/1158, read in conjunction with recital 6 thereof, that directive lays down common minimum requirements to combat the under-representation of women in the labour market by facilitating, through the equal sharing of caring responsibilities between men and women, the reconciliation of work and family life for workers who are parents or carers.

82 As is apparent from recital 11 of Directive 2019/1158, the current EU legal framework contains few provisions encouraging men to assume an equal share to that of women with regard to caring responsibilities, even though the use of work-life balance arrangements by fathers, such as leave or flexible working arrangements, has been shown to have a positive effect on equality between men and women in reducing the relative amount of unpaid family work undertaken by women and, therefore, by leaving them more time for paid employment.

83 In that regard, Article 9 of Directive 2019/1158, in so far as it requires Member States to provide for the right of workers to request flexible working arrangements, is a main provision of that directive.

84 Accordingly, the failure to transpose Article 9 into national law, in so far as it impedes the

ability of working parents and carers to make effective use of their right to request flexible working arrangements, within the meaning of that article, and has an impact not only on female workers and their level of employment, but also on the promotion of a high level of employment in general, must be regarded as definitely serious.

85 That finding is reinforced by the fact that the failure to transpose in question affects the entire workforce throughout the territory of the Member State concerned.

86 None of the arguments raised by Ireland can be taken into account as a mitigating circumstance in assessing the seriousness of the infringement at issue.

87 First, Ireland submits that the failure to fulfil obligations established concerns, in essence, the failure to transpose Article 9 of Directive 2019/1158 alone, the other articles of that directive having been transposed as at the date on which the present action was brought, with the result that the Commission seeks in fact a retroactive penalty.

88 In that regard, it should be borne in mind, as is apparent from the case-law cited in paragraph 78 above, that the obligation to adopt measures for the transposition of a directive is a fundamental obligation which cannot be qualified by the absolute number of provisions of that directive already transposed and those still to be transposed.

89 As to the argument that the Commission seeks to apply for a retroactive penalty for the provisions of Directive 2019/1158 which were transposed prior to the date on which the present action was brought, it is important to note that 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 reasoned opinion, the Court being unable to take account of any subsequent changes (judgment of 6 March 2025, *Commission v Germany (Whistleblowers directive)*, C-149/23, EU:C:2025:145, paragraph 45 and the case-law cited).

90 Admittedly, although, when setting the amount of the lump sum payment, it is necessary to take into consideration, as regards the assessment of the seriousness of the infringement and its duration, the fact that, in the course of the proceedings, the Member State notified all the transposition measures to the Commission, with the result that, at the date on which the Court assesses the facts, the directive is considered to have been transposed, the fact remains that the Commission is entitled to seek an order for payment of a lump sum in respect of the consequences of the failure of the Member State concerned to fulfil its obligations that occurred between the expiry of the period prescribed by that directive and the actual date of its transposition into national law.

91 Second, it must be recalled that the duty of sincere cooperation with the Commission, as laid down in Article 4(3) TEU, means that every Member State is under a duty to facilitate the Commission's accomplishment of its task consisting, in accordance with Article 17 TEU, in ensuring, as guardian of the Treaties, the application of EU law under the control of the Court. Accordingly, only cooperation with the Commission characterised by steps

showing an intention to comply within the shortest time possible with the obligations arising from a directive may be taken into account as a mitigating circumstance in the context of assessing the seriousness of the infringement (judgment of 6 March 2025, *Commission v Germany (Whistleblowers directive)*, C-149/23, EU:C:2025:145 paragraph 99 and the case-law cited).

92 In the present case, it must be held that Ireland has not shown exemplary speed in that 8 months have lapsed since the expiry of the two-month period laid down in the reasoned opinion and approximately 19 months since the expiry of the period laid down in Article 20(1) of Directive 2019/1158 before that Member State fully complied with its obligations under that directive.

93 Third, it is not for the Member State concerned, when transposing the provisions of a directive, to assess the nature of the objectives pursued by that directive.

94 Even though recital 12 of Directive 2019/1158 states that equal uptake of family related leave between men and women also depends on other appropriate measures not provided for by that directive, such as the provision of accessible and affordable childcare and long-term care services, Ireland cannot avoid its obligation to transpose Article 9 of that directive by maintaining that the effect on the promotion of equality between men and women in the workplace of the introduction of flexible working arrangements for workers who are parents or carers will not be immediate but will happen over time.

95 Fourth, Ireland's argument that the delay in transposing Article 9 of Directive 2019/1158 did not have a significant effect on private and public interests because the measures transposing that article exceeded the minimum requirements of that directive must be rejected. A Member State cannot exempt itself from its obligation to transpose a directive by relying on the introduction of measures which do not fall within the scope of that directive or which go beyond its objectives.

96 In the second place, concerning the assessment of the duration of the infringement, it must be recalled that, as regards the beginning of the period which must be taken into account in order to fix the amount of the lump sum, the relevant date for evaluating the duration of the infringement at issue is not the date of expiry of the period laid down in the Commission's reasoned opinion, but the date of expiry of the transposition deadline laid down in the directive in question (judgment of 6 March 2025, *Commission v Germany (Whistleblowers directive)*, C-149/23, EU:C:2025:145, paragraph 101 and the case-law cited).

97 In the present case, it is not validly disputed that, on expiry of the transposition deadline laid down in Article 20(1) of Directive 2019/1158, namely on 2 August 2022, Ireland had not adopted the laws, regulations and administrative provisions necessary to ensure the transposition in full of that directive nor, consequently, had it notified them to the Commission.

98 Moreover, as is apparent from paragraph 21 above, it is only on 6 March 2024 that Ireland

put an end to the failure to fulfil obligations established in paragraph 39 above.

- 99 It follows that the failure to fulfil obligations has persisted from 3 August 2022 to 5 March 2024, that is to say over a year and a half.
- 100 In the third place, as regards the ability to pay of the Member State at issue, it is clear from the case-law of the Court that, without prejudice to the possibility for the Commission to propose financial penalties which are based on multiple criteria, with a view, in particular, to allowing a reasonable gap between the various Member States to be maintained, it is necessary to rely on the GDP of that State as the predominant factor for the purpose of assessing its ability to pay and for the fixing of penalties that are sufficiently dissuasive and proportionate in order effectively to prevent a repeat of similar infringements of EU law in the future (judgments of 25 April 2024, *Commission v Poland (Whistleblowers directive)*, C-147/23, EU:C:2024:346, paragraph 81, and of 6 March 2025, *Commission v Germany (Whistleblowers directive)*, C-149/23, EU:C:2025:145, paragraph 103).
- 101 In that regard, the Court has repeatedly held that it was necessary to take account of recent trends in the GDP of the Member State concerned, at the time of the Court's examination of the facts (judgments of 25 April 2024, *Commission v Poland (Whistleblowers directive)*, C-147/23, EU:C:2024:346, paragraph 82, and of 6 March 2025, *Commission v Germany (Whistleblowers directive)*, C-149/23, EU:C:2025:145, paragraph 104).
- 102 Here, the 'n' factor, which represents the capacity to pay of the Member State concerned as compared with the capacity to pay of the other Member States and is applied by the Commission in accordance with points 3.4 and 4.2 of the 2023 Communication, is defined as a weighted geometric average of the GDP of the Member State concerned, compared to the average of the Member States' GDPs, accounting for two thirds of the calculation of the 'n' factor, and of the population of the Member State concerned, compared to the average of Member States' populations, accounting for one third of the calculation of the 'n' factor, as is apparent from the equation set out in paragraph 9 above. The Commission justifies that method of calculating the 'n' factor both by reference to the objective of maintaining a reasonable deviation between the 'n' factors of the Member States, as compared to a calculation based solely on Member States' GDPs, and the objective of ensuring a degree of stability in the calculation of the 'n' factor, since population is unlikely to vary significantly on an annual basis (judgments of 25 April 2024, *Commission v Poland (Whistleblowers directive)*, C-147/23, EU:C:2024:346, paragraph 83, and of 6 March 2025, *Commission v Germany (Whistleblowers directive)*, C-149/23, EU:C:2025:145, paragraph 105).
- 103 However, the Court has held that, when determining the capacity to pay of the Member State concerned, a demographic criterion cannot be taken into account in accordance with the detailed rules laid down in points 3.4 and 4.2 of the 2023 Communication as part of the method of calculating the 'n' factor (judgments of 25 April 2024, *Commission v Poland (Whistleblowers directive)*, C-147/23, EU:C:2024:346, paragraph 86, and of 6 March 2025, *Commission v Germany (Whistleblowers directive)*, C-149/23, EU:C:2025:145, paragraph 106).

104 Accordingly, in accordance with the case-law recalled in paragraph 100 above and in the absence of a relevant criterion put forward by the Commission to ensure stability of calculation and to maintain a reasonable deviation between the ‘n’ factors of the Member States, it is by taking into account the average GDP of Ireland over the last three years that the amount of the lump sum is to be fixed.

105 Having regard to those considerations and in the light of the Court’s discretion under Article 260(3) TFEU, which provides that the Court cannot, as regards the payment of the lump sum imposed by it, exceed the amount specified by the Commission, it must be held that the effective prevention of future repetition of infringements similar to that resulting from the infringement of Article 20(1) of Directive 2019/1158 affecting the full effectiveness of EU law requires the imposition of a lump sum in the amount of EUR 1 540 000.

Costs

106 Under Article 138(1) of the Rules of Procedure of the Court of Justice, 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 Ireland 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 (Sixth Chamber) hereby:

- 1. Declares that, by failing, on expiry of the period laid down in the reasoned opinion of the European Commission, to adopt the laws, regulations and administrative provisions necessary to comply with Directive (EU) 2019/1158 of the European Parliament and of the Council of 20 June 2019 on work-life balance for parents and carers and repealing Council Directive 2010/18/EU and, therefore, by failing to notify them to the Commission, Ireland has failed to fulfil its obligations under Article 20(1) of Directive 2019/1158;**
- 2. Orders Ireland to pay to the European Commission a lump sum in the amount of EUR 1 540 000;**
- 3. Orders Ireland to bear its own costs and to pay those incurred by the European Commission.**

Kumin

Biltgen

Ziemele

Delivered in open court in Luxembourg on 1 August 2025.

Registrar

President of the Chamber

* Language of the case: English.