

Form of order sought

— Hold that the Republic of Austria, when implementing the first railway package, failed to comply with its obligations under Article 6(3) of and Annex II to Directive 91/440/EEC in its amended version and Article 4(2) and Article 14(2) of Directive 2001/14/EC;

— Order the Republic of Austria to pay the costs.

Pleas in law and main arguments

The Commission is of the opinion that the required independence of the operator of railway infrastructure in Austria has not been properly implemented in national law.

Admittedly the organisation in a common holding of an undertaking which is to carry out essential functions in relation to the operation of railway infrastructure and an undertaking which provides rail transport services, as it exists in Austria, is in principle permissible. It must however be ensured that the undertakings are ascertainably economically independent of each other.

The parent company may in particular not exercise any control over the subsidiary which carries out essential railway infrastructure functions. That is not guaranteed in Austria. The independence of the infrastructure operator is not supervised by any independent agency and there is no effective means of redress for competitors where a particular undertaking receives advantages.

There are also insufficient legislative or contractual rules governing the relationship between the holding company and its subsidiary which carries out essential railway infrastructure functions.

According to the Commission, the manifold entanglements of staff between parent and subsidiary undertakings, for example dual roles in the respective company boards, give rise to doubts as to economic independence. Management personnel of one undertaking should be precluded for several years from taking up management positions in the other undertaking. Moreover, appointments of managers to the body entrusted with essential functions should be made only subject to supervision by an independent agency.

In addition, there should be a physical and personal separation of respective computer systems, in order to ensure the required independence of the undertaking entrusted with essential functions of railway infrastructure operations.

Action brought on 2 December 2010 — European Commission v Italian Republic**(Case C-565/10)**

(2011/C 30/46)

*Language of the case: Italian***Parties**

Applicant: European Commission (represented by: S. Pardo Quintillán and D. Recchia, Agents)

Defendant: Italian Republic

Form of order sought

The Commission claims that the Court should:

— declare that the Italian Republic has failed to fulfil its obligations under Articles 3(1) and (2) of Council Directive 91/271/EEC of 21 May 1991 concerning urban wastewater treatment,⁽¹⁾ under Article 4(1) and (3) of that directive, read in conjunction with Annex IB thereto, and under Article 10 of that directive, by failing to take the measures necessary in order to ensure that:

— the following agglomerations with a population equivalent of more than 15 000, which discharge into receiving waters that are not regarded as 'sensitive areas' within the meaning of Article 5 of Directive 91/271/EEC, are provided with collecting systems in accordance with the first indent of Article 3(1) of that directive:

— Chieti and Gissi (Abruzzo),

— Acri, Siderno, Bagnara Calabria, Bianco, Cassano allo Jonio, Castrovillari Crotone, Santa Maria del Cedro, Gioia Tauro, Lamezia Terme, Melito di Porto Salvo, Mesoraca, Montebello Ionico, Montepaone, Motta San Giovanni, Reggio Calabria, Rende, Rossano, Scalea, Sellia Marina, Soverato and Strongoli (Calabria),

— Afragola, Nola, Ariano Irpino, Avellino, Battipaglia, Benevento, Capaccio, Capri, Caserta, Mercato Sanserverino, Torre del Greco, Aversa, Ischia, Casamicciola Terme, Forio, Napoli Est, Napoli Nord, Napoli Ovest, Vico Equense, Salerno and Montesarchio (Campania),

— Cervignano del Friuli and Monfalcone (Friuli-Venezia Giulia),

— Frascati and Zagarolo (Lazio),

— Camisano, Genova, La Spezia, Riva Ligure, Sanremo and Ventimiglia (Liguria),

— Tolentino (Marche),

- Campobasso 1 and Isernia (Molise),
- Manduria, Porto Cesareo, Supersano and Traviano (Apulia),
- Follonica and Piombino (Tuscany),
- Misterbianco + others, Paternò, Aci Catena, Adrano, Catania + others, Giarre-Mascalì-Riposto + others, Caltagirone, Aci Castello, Acireale + others, Belpasso, Biancavilla, Gravina di Catania, Tremestieri Etneo, San Giovanni La Punta, Caltanissetta-San Cataldo, Macchitella, Niscemi, Agrigento and outskirts, Favara, Palma di Montechiaro, Porto Empedocle, Sciacca, Cefalù, Carini + ASI Palermo, Monreale, Palermo + peripheral districts, Santa Flavia, Augusta, Avola, Priolo Gargallo, Carlentini, Ragusa, Marina di Ragusa, Santa Croce Camerina, Vittoria, Scoglitti, Favignana, Marsala, Partanna 1 (Villa Ruggero), Capo d'Orlando, Giardini Naxos, Consortile Letojanni, Pace del Mela, Piraino, Roccalumera, Consortile Sant'Agata Militello, Consortile Torregrotta, Messina 1, Messina and Messina 6 (Sicily);
- in the following agglomerations with a population equivalent of more than 15 000, which discharge into receiving waters that are not regarded as 'sensitive areas' within the meaning of Article 5 of Directive 91/271/EEC, the urban waste water entering collecting systems undergoes treatment as laid down in Article 4(1) and (3) of that directive:
 - Gissi and Lanciano-Castel Frentano (Abruzzo),
 - Acri, Siderno, Bagnara Calabria, Cassano allo Ionio, Castrovillari, Crotone, Melito di Porto Salvo, Montebello Ionico, Montepaone, Motta San Giovanni, Reggio Calabria and Rossano (Calabria),
 - Ariano Irpino, Avellino, Battipaglia, Benevento, Capaccio, Capri, Caserta, Aversa, Ischia, Casamiciola Terme, Forio, Massa Lubrense, Napoli Est, Napoli Nord and Vico Equense (Campania),
 - Trieste-Muggia-San Dorligo (Friuli-Venezia Giulia),
 - Zagarolo (Lazio),
 - Albenga, Borghetto Santo Spirito, Finale Ligure, Genova, Imperia, La Spezia, Margherita Ligure, Quinto, Rapallo, Recco and Riva Ligure (Liguria),
 - Campobasso 1 and Isernia (Molise),
 - Casamassima, Casarano, Manduria, Monte Sant'Angelo, Porto Cesareo, Salice Salentino, San Giovanni Rotondo, San Vito dei Normanni, Squinzano, Supersano and Vernole (Apulia),
 - Vicenza (Veneto),
 - Misterbianco + others, Scordia-Militello Val di Catania, Palagonia, Aci Catena, Giarre-Mascalì-Riposto + others, Caltagirone, Aci Castello, Bronte, Acireale + others, Belpasso, Gravina di Catania, Tremestieri Etneo, San Giovanni La Punta, Macchitella, Niscemi, Riesi, Agrigento and outskirts, Favara, Palma di Montechiaro, Menfi, Porto Empedocle, Ribera, Sciacca, Bagheria, Cefalù, Carini + ASI Palermo, Misilmeri, Monreale, Santa Flavia, Termini Imerese, Trabia, Augusta, Avola, Carlentini, Rosolini, Pozzallo, Ragusa, Modica, Scicli, Scoglitti, Campobello di Mazara, Castelvetro 1, Triscina Marinella, Trapani-Erice (Casa santa), Favignana, Marsala, Mazara del Vallo, Partanna 1 (Villa Ruggero), Barcellona Pozzo di Gotto, Capo d'Orlando, Furnari, Giardini Naxos, Consortile Letojanni, Pace del Mela, Piraino, Roccalumera, Consortile Sant'Agata Militello, Consortile Torregrotta, Gioiosa Marea, Messina 1, Messina 6, Milazzo, Patti and Rometta (Sicily); and
 - the urban waste water treatment plants built to comply with the requirements laid down in Articles 4 to 7 of Directive 91/271/EEC are designed, constructed, operated and maintained in such a way as to ensure 'sufficient performance' under all normal local climatic conditions and that the design of those treatment plants takes account of the seasonal variations of the load in the agglomerations of:
 - Gissi and Lanciano-Castel Frentano (Abruzzo),
 - Acri, Siderno, Bagnara Calabria, Cassano allo Ionio, Castrovillari, Crotone, Melito di Porto Salvo, Montebello Ionico, Montepaone, Motta San Giovanni, Reggio Calabria and Rossano (Calabria),
 - Ariano Irpino, Avellino, Battipaglia, Benevento, Capaccio, Capri, Caserta, Aversa, Ischia, Casamiciola Terme, Forio, Massa Lubrense, Napoli Est, Napoli Nord and Vico Equense (Campania),
 - Trieste-Muggia-San Dorligo (Friuli-Venezia Giulia),
 - Zagarolo (Lazio),
 - Albenga, Borghetto Santo Spirito, Finale Ligure, Genova, Imperia, La Spezia, Margherita Ligure, Quinto, Rapallo, Recco and Riva Ligure (Liguria),
 - Casamassima, Casarano, Manduria, Monte Sant'Angelo, Porto Cesareo, Salice Salentino, San Giovanni Rotondo, San Vito dei Normanni, Squinzano, Supersano and Vernole (Apulia),

- Vicenza (Veneto),
- Misterbianco + others, Scordia — Militello Val di Catania, Palagonia, Aci Catena, Giarre-Mascalì-Riposto + others, Caltagirone, Aci Castello, Bronte, Acireale + others, Belpasso, Gravina di Catania, Tremestieri Etneo, San Giovanni La Punta, Macchitella, Niscemi, Riesi, Agrigento and outskirts, Favara, Palma di Montechiaro, Menfi, Porto Empedocle, Ribera, Sciacca, Bagheria, Cefalù, Carini + ASI Palermo, Misilmeri, Monreale, Santa Flavia, Termini Imerese, Trabia, Augusta, Avola, Carlentini, Rosolini, Pozzallo, Ragusa, Modica, Scicli, Scoglitti, Campobello di Mazara, Castevetrano I, Triscina Marinella, Trapani-Erice (Casa santa), Favignana, Marsala, Mazara del Vallo, Partanna I (Villa Ruggero), Barcellona Pozzo di Gotto, Capo d'Orlando, Furnari, Giardini Naxos, Consortile Letojanni, Pace del Mela, Piraino, Roccalumera, Consortile Sant'Agata Militello, Consortile Torregrotta, Gioiosa Marea, Messina I, Messina 6, Milazzo, Patti and Rometta (Sicily); and

— order the Italian Republic to pay the costs.

Pleas in law and main arguments

By its application, the Commission complains that, in parts of its territory, Italy has not correctly implemented Council Directive 91/271/EEC of 21 May 1991 concerning urban waste-water treatment.

First and foremost, the Commission finds that there have been various infringements of the first indent of Article 3(1) and of Article 3(2) of Directive 91/271/EEC, under which the Member States were to ensure that, by 31 December 2000 at the latest, all agglomerations with a population equivalent of more than 15 000 were provided with collecting systems for urban waste water in accordance with the requirements laid down in Annex IA to that directive. That obligation was not correctly fulfilled in a number of the agglomerations falling within the scope of the provision in question in the Regions of Abruzzo, Calabria, Campania, Friuli-Venezia Giulia, Lazio, Liguria, Molise, Apulia, Tuscany and Sicily.

Moreover, under Article 4(1) and (3) of Directive 91/271/EEC, the Member States were to have ensured, by 31 December 2000 at the latest, that for all discharges from agglomerations with a population equivalent of more than 15 000 urban waste water entering collecting systems was to have undergone, before discharge, secondary treatment or an equivalent treatment in accordance with the requirements laid down in Annex IB to the directive. The Commission found that the provision in question had been infringed in a number of agglomerations in the Regions of Abruzzo, Calabria, Campania, Friuli-Venezia Giulia, Lazio, Liguria, Molise, Apulia, Veneto and Sicily. In most cases, the infringement of Article 4 of Directive 91/271/EEC also involves infringement of Article 10 of that directive,

which provides that the urban waste water treatment plants were to be designed, constructed, operated and maintained in such a way as to ensure 'sufficient performance' under all normal local climatic conditions.

(¹) OJ 1991 L 135, p. 40.

Action brought on 13 December 2010 — European Commission v Republic of Austria

(Case C-582/10)

(2011/C 30/47)

Language of the case: German

Parties

Applicant: European Commission (represented by: N. Yerrell and B. Schöfer, acting as Agents)

Defendant: Republic of Austria

Form of order sought

— Declare that, by failing fully to adopt the laws, regulations and administrative provisions necessary to transpose Directive 2008/68/EC of the European Parliament and of the Council of 24 September 2008 on the inland transport of dangerous goods (¹) or fully to communicate such measures to the Commission, the Republic of Austria has failed to fulfil its obligations under that directive;

— order the Republic of Austria to pay the costs.

Pleas in law and main arguments

The time-limit for the transposition of Directive 2008/68/EC expired on 30 June 2009.

(¹) OJ 2008 L 260, p. 13.

Order of the President of the Third Chamber of the Court of 16 November 2010 — European Commission v Italian Republic

(Case C-383/08) (¹)

(2011/C 30/48)

Language of the case: Italian

The President of the Third Chamber has ordered that the case be removed from the register.

(¹) OJ C 301, 22.11.2008.