



Reports of Cases

JUDGMENT OF THE COURT (Tenth Chamber)

14 September 2017*

(Failure of a Member State to fulfil obligations — Directive 91/271/EEC — Urban waste water treatment — Article 4(1) and (3) — Secondary or equivalent treatment)

In Case C-320/15,

ACTION for failure to fulfil obligations under Article 258 TFEU, brought on 26 June 2015,

European Commission, represented by G. Zavvos and E. Manhaeve, acting as Agents,

applicant,

v

Hellenic Republic, represented by E. Skandalou, acting as Agent,

defendant,

supported by:

United Kingdom of Great Britain and Northern Ireland, represented by C. Brodie and J. Kraehling, acting as Agents,

intervener,

THE COURT (Tenth Chamber),

composed of M. Berger, President of the Chamber, A. Borg Barthet (Rapporteur) and E. Levits, Judges,

Advocate General: M. Bobek,

Registrar: R. Schiano, Administrator,

having regard to the written procedure and further to the hearing on 25 January 2017,

after hearing the Opinion of the Advocate General at the sitting on 30 March 2017,

gives the following

* Language of the case: Greek.

Judgment

- 1 By its action, the European Commission requests the Court to declare that, by not having ensured an appropriate level of treatment of urban waste water from the agglomerations of Prosotsani, Doxato, Eleftheroupoli, Vagia, Galatista, Desfina and Chanioti, whose population equivalent (p.e.) is between 2 000 and 10 000, and of Polychrono, whose p.e. is between 10 000 and 15 000, the Hellenic Republic has failed to fulfil its obligations under Article 4(1) and (3) of Council Directive 91/271/EEC of 21 May 1991 concerning urban waste water treatment (OJ 1991 L 135, p. 40) as amended by Regulation (EC) No 1137/2008 of the European Parliament and of the Council of 22 October 2008 (OJ 2008 L 311, p. 1) ('Directive 91/271').

Legal context

- 2 Article 1 of Directive 91/271 provides:

'This Directive concerns the collection, treatment and discharge of urban waste water and the treatment and discharge of waste water from certain industrial sectors.

The objective of the Directive is to protect the environment from the adverse effects of the abovementioned waste water discharges.'

- 3 Article 2 of Directive 91/271 states:

'For the purpose of this Directive:

1. "urban waste water" means domestic waste water or the mixture of domestic waste water with industrial waste water and/or run-off rain water;

...

5. "collecting system" means a system of conduits which collects and conducts urban waste water;

6. "1 p.e. (population equivalent)" means the organic biodegradable load having a five-day biochemical oxygen demand (BOD5) of 60 g of oxygen per day;

...

8. 'secondary treatment' means treatment of urban waste water by a process generally involving biological treatment with a secondary settlement or other process in which the requirements established in Table 1 of Annex I are respected;

...'

- 4 Article 4 of Directive 91/271 provides:

'1. Member States shall ensure that urban waste water entering collecting systems shall before discharge be subject to secondary treatment or an equivalent treatment as follows:

...

- at the latest by 31 December 2005 for all discharges from agglomerations of between 10 000 and 15 000 p.e.,

- at the latest by 31 December 2005 for discharges to freshwater and estuaries from agglomerations of between 2 000 and 10 000 p.e.

...

3. Discharges from urban waste water treatment plants described in paragraphs 1 and 2 shall satisfy the relevant requirements of section B of Annex I. ...

...'

5 Annex I to Directive 91/271, entitled 'Requirements for urban waste water', is worded as follows:

'...

B. Discharge from urban waste water treatment plants to receiving waters ...

1. Waste water treatment plants shall be designed or modified so that representative samples of the incoming waste water and of treated effluent can be obtained before discharge to receiving waters.
2. Discharges from urban waste water treatment plants subject to treatment in accordance with Articles 4 and 5 shall meet the requirements shown in Table 1.

...

D. Reference methods for monitoring and evaluation of results

1. Member States shall ensure that a monitoring method is applied which corresponds at least with the level of requirements described below.

Alternative methods to those mentioned in paragraphs 2, 3 and 4 may be used provided that it can be demonstrated that equivalent results are obtained.

...

2. Flow-proportional or time-based 24-hour samples shall be collected at the same well-defined point in the outlet and if necessary in the inlet of the treatment plant in order to monitor compliance with the requirements for discharged waste water laid down in this Directive.

...

3. The minimum annual number of samples shall be determined according to the size of the treatment plant and be collected at regular intervals during the year:

- 2 000 to 9 999 p.e.:

12 samples during the first year.

four samples in subsequent years, if it can be shown that the water during the first year complies with the provisions of the Directive; if one sample of the four fails, 12 samples must be taken in the year that follows.

- 10 000 to 49 999 p.e.:

12 samples.

...'

- 6 Table 1 of Annex I to Directive 91/271 contains the requirements for discharges from urban waste water treatment plants subject, inter alia, to Article 4 of the directive.

Pre-litigation procedure

- 7 By letter of 29 May 2007, the Commission requested the Greek authorities to provide, within six months, data relating, inter alia, to compliance with their urban waste water treatment obligations laid down in Article 4 of Directive 91/271, in respect of 2007. Whilst the Greek authorities did not act on that request within the prescribed period, they did however produce the requested data two years later, in response to a questionnaire that had been sent relating to 2009.
- 8 Since the production of that data led the Commission to take the view that 62 Greek agglomerations were in breach of Article 4 of Directive 91/271, it requested certain details from the Greek authorities by letter of 5 October 2010.
- 9 After examining the information provided by the Greek authorities in their reply of 21 December 2010, on 17 June 2011 the Commission sent the Hellenic Republic a letter of formal notice stating that in its view the Hellenic Republic had failed to fulfil its obligations under Article 4 of Directive 91/271 so far as concerns those 62 agglomerations and consequently requesting it to submit its observations.
- 10 On 11 August 2011 the Hellenic Republic responded to the letter of formal notice by producing information relating to those agglomerations.
- 11 On 1 June 2012 the Commission sent the Hellenic Republic a reasoned opinion stating that it was continuing to infringe Directive 91/271. The Commission requested it to submit its observations within two months of receipt of the reasoned opinion.
- 12 By letters of 20 July 2012 and 20 March 2013, the Hellenic Republic responded to the reasoned opinion by stating that four agglomerations would satisfy the requirements of Directive 91/271 when various projects financed by the operational programme 'Environment and Sustainable Development' were completed and that eight other agglomerations had an operational waste water treatment plant whose output data was in compliance with the directive's requirements.
- 13 On 21 February 2014, the Commission sent the Hellenic Republic an additional reasoned opinion on the ground that eight agglomerations, namely Prosotsani, Doxato, Eleftheroupoli, Vagia, Desfina, Galatista, Polychrono and Chanioti, still did not satisfy the requirements of Directive 91/271.
- 14 In its reply of 22 April 2014 to the additional reasoned opinion, the Hellenic Republic conceded that four of the eight agglomerations at issue would not comply fully with those requirements until the cofinanced projects were completed. It observed that, although the other four agglomerations had treatment plants that were operated in compliance with Directive 91/271, they had not sent a sufficient number of samples in accordance with the directive.
- 15 Since the Commission was not satisfied with the replies provided by the Hellenic Republic, it decided to bring the present action.

The action

- 16 By its action, the Commission alleges that the Hellenic Republic has failed to fulfil its obligations under Article 4(1) and (3) of Directive 91/271 in that it has not ensured secondary or equivalent treatment of discharged urban waste water in respect of one agglomeration of between 10 000 and 15 000 p.e. and seven agglomerations of between 2 000 and 10 000 p.e.

- 17 In accordance with the Court's 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 the Member State at the end of the period laid down in the reasoned opinion, and the Court cannot take account of any subsequent changes (judgment of 10 April 2014, *Commission v Italy*, C-85/13, not published, EU:C:2014:251, paragraph 31 and the case-law cited).
- 18 It follows that, in this instance, since the additional reasoned opinion, sent on 21 February 2014 and received by the Hellenic Republic on the same day, set a period of two months from receipt thereof for the Hellenic Republic to comply with its obligations stemming from Directive 91/271, the existence of the alleged failure to fulfil its obligations must be assessed as at 21 April 2014.
- 19 Consequently, for the purpose of examining the merits of the present action, it should be determined whether, as at 21 April 2014, it may be considered established that, as the Commission submits, the Hellenic Republic was not complying with the requirements flowing from Article 4(1) of Directive 91/271, so far as concerns the agglomerations of Prosotsani, Doxato, Eleftheroupoli, Vagia and Galatista, and those flowing from Article 4(3) thereof, so far as concerns the agglomerations of Polychrono, Chanioti and Desfina.
- 20 In its pleadings, the Hellenic Republic states that it does not dispute that, as at the date set in the additional reasoned opinion, the discharge of urban waste water from the agglomerations of Prosotsani, Doxato, Eleftheroupoli, Vagia and Galatista did not meet the requirements of Article 4(1) of Directive 91/271.
- 21 However, the Court has consistently held that it is for it to determine whether or not the alleged breach of obligations exists, even if the State concerned does not deny the breach (judgment of 10 March 2016, *Commission v Spain*, C-38/15, not published, EU:C:2016:156, paragraph 29 and the case-law cited).
- 22 In that regard, it should be noted that the second and third indents of Article 4(1) of Directive 91/271 impose upon the Member States a precise obligation as to the result to be achieved, worded in a clear and unequivocal manner, and according to which urban waste water entering collecting systems must be subject to secondary treatment or an equivalent treatment, either before any discharge where it comes from agglomerations of between 10 000 and 15 000 p.e. or before discharge to freshwater and estuaries where it comes from agglomerations of between 2 000 and 10 000 p.e.
- 23 In addition, in accordance with Article 4(3) of Directive 91/271, that secondary or equivalent treatment must be carried out by treatment plants whose discharges satisfy the requirements set out in section B of Annex I to the directive.
- 24 In this instance, as the Hellenic Republic has conceded in its pleadings, it is clear from the information provided to the Court that, as at the date set in the additional reasoned opinion, in the agglomerations referred to in paragraph 20 of the present judgment the works necessary for the construction or upgrading of waste water treatment plants were not yet completed and that, therefore, discharges of urban waste water from those agglomerations were not subject to the secondary or equivalent treatment required in Article 4(1) of Directive 91/271.
- 25 It follows that, as at the date set in the additional reasoned opinion, discharges of urban waste water from the agglomerations of Prosotsani, Doxato, Eleftheroupoli, Vagia and Galatista — as the Hellenic Republic has conceded — did not comply with Article 4(1) of Directive 91/271.
- 26 So far as concerns the agglomerations of Polychrono, Chanioti and Desfina, it is apparent from the pleadings submitted by the parties that the Hellenic Republic provided the Commission with samples for 2011 to 2014 at irregular intervals and in varying numbers.

- 27 As regards the results of those samples, the Commission submitted in the case of the agglomeration of Polychrono that, of the 84 samples provided for 2012 and 2013, seven exceeded the permitted values, that the samples taken for the agglomeration of Chanioti between 2012 and 2014 lacked probative value because they were not taken regularly, and that, of the 14 samples taken at irregular intervals between 2011 and 2013 in respect of the agglomeration of Desfina, two exceeded the prescribed values.
- 28 Whilst the Commission expressly stated at the hearing, in reply to a question from the Court in this regard, that it was henceforth abandoning the requirement for the taking of 12 samples, that is to say, one sample per month, to extend over a whole year in order for it to be established that the plants concerned comply with the requirements of Article 4(3) of Directive 91/271, read in conjunction with section B of Annex I thereto, it nevertheless submitted in the course of the hearing that the samples provided by the Hellenic Republic were not representative from a qualitative point of view given the lack of samples permitting a comparative examination and the failure to take account of the relevance of the time at which samples must be taken.
- 29 In that regard, it should be pointed out that, so far as concerns the agglomerations of Polychrono, Chanioti and Desfina, the Commission complained in both the pre-litigation procedure and the application that the Hellenic Republic had failed to fulfil its obligations under Article 4(3) of Directive 91/271 on account of the number of samples provided.
- 30 The requirement relating to the relevance of the time at which the samples must be taken is not among the requirements envisaged in section B of Annex I to Directive 91/271 and, therefore, does not fall within the scope of the obligations owed by the Member States under Article 4 of the directive.
- 31 In addition, and in any event, in the context of an action for failure to fulfil obligations, the purpose of the pre-litigation procedure is to give the Member State concerned an opportunity, on the one hand, to comply with its obligations under EU law and, on the other, to avail itself of its right to defend itself properly against the objections formulated by the Commission. The subject matter of proceedings under Article 258 TFEU is therefore delimited by the pre-litigation procedure prescribed by that provision. The proper conduct of that procedure constitutes an essential guarantee required by the FEU Treaty not only in order to protect the rights of the Member State concerned, but also in order to ensure that any contentious procedure will have a clearly defined dispute as its subject matter (judgment of 11 September 2014, *Commission v Germany*, C-525/12, EU:C:2014:2202, paragraph 21 and the case-law cited).
- 32 In its application, as in the pre-litigation procedure, the Commission confined itself to complaining that the Hellenic Republic had provided samples that were not representative because they were insufficient in number, and did not call into question the quality of the samples that had been submitted to it.
- 33 It follows that the objections relating to the lack of samples permitting a comparative examination and to the failure to take account of the relevance of the time at which samples must be taken fall outside the limits of the present action for failure to fulfil obligations and must, accordingly, be dismissed as inadmissible.
- 34 That being so, given that it is apparent from examination of the data supplied by the Hellenic Republic in its defence that it provided the Commission with a number of samples showing the effectiveness of the secondary treatment of urban waste water after the collecting systems of the aforesaid agglomerations entered into operation, and that the Commission stated that it was henceforth abandoning the requirement for the taking of 12 samples, that is to say, one sample per month, to extend over a whole year, it has been demonstrated that, as at the date set in the additional reasoned

opinion, discharges from the treatment plants of the agglomerations of Polychrono, Chanioti and Desfina satisfied the requirements of Article 4(3) of Directive 91/271, so that, as regards those agglomerations, the alleged failure to fulfil obligations is not proven.

- 35 In the light of all the foregoing considerations, it must be held that, by not having ensured secondary or equivalent treatment of urban waste water from the agglomerations of Prosotsani, Doxato, Eleftheroupoli, Vagia and Galatista, whose p.e. is between 2 000 and 10 000, the Hellenic Republic has failed to fulfil its obligations under Article 4(1) of Directive 91/271.

Costs

- 36 Under Article 138(3) of the Rules of Procedure of the Court of Justice, where each party succeeds on some and fails on other heads, the Court may apportion the costs or order that each party bear its own costs. Since, in the present case, the Commission's action has been upheld only in part, each party should be ordered to bear its own costs.

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

- 1. Declares that, by not having ensured secondary or equivalent treatment of urban waste water from the agglomerations of Prosotsani, Doxato, Eleftheroupoli, Vagia and Galatista, whose population equivalent is between 2 000 and 10 000, the Hellenic Republic has failed to fulfil its obligations under Article 4(1) of Council Directive 91/271/EEC of 21 May 1991 concerning urban waste water treatment as amended by Regulation (EC) No 1137/2008 of the European Parliament and of the Council of 22 October 2008;**
- 2. Dismisses the action as to the remainder;**
- 3. Orders the European Commission and the Hellenic Republic to bear their own costs.**

[Signatures]