



## Reports of Cases

### JUDGMENT OF THE COURT (Second Chamber)

28 January 2016\*

(Failure of a Member State to fulfil obligations — Directive 91/271/EEC — Urban waste water treatment — Article 4 — Secondary treatment or equivalent — Annex I, Sections B and D)

In Case C-398/14,

ACTION under Article 258 TFEU for failure to fulfil obligations, brought on 20 August 2014,

**European Commission**, represented by P. Guerra e Andrade and E. Manhaeve, acting as Agents,

applicant,

v

**Portuguese Republic**, represented by L. Inez Fernandes, J. Reis Silva and J. Brito e Silva, acting as Agents,

defendant,

THE COURT (Second Chamber),

composed of R. Silva de Lapuerta, President of the First Chamber, acting as President of the Second Chamber, J.L. da Cruz Vilaça, A. Arabadjiev, C. Lycourgos (Rapporteur) and J.-C. Bonichot, Judges,

Advocate General: P. Cruz Villalón,

Registrar: M. Ferreira, Principal Administrator,

having regard to the written procedure and further to the hearing on 17 June 2015,

after hearing the Opinion of the Advocate General at the sitting on 22 September 2015,

gives the following

### Judgment

- 1 By its application, the European Commission asks the Court to declare that, by not ensuring an adequate level of treatment of urban waste water in 52 agglomerations, the Portuguese Republic has failed to fulfil its obligations under Article 4 of Council Directive 91/271/EEC of 21 May 1991

\* Language of the case: Portuguese.

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 The first, third, fourth and eighth recitals of Directive 91/271 state:

‘Whereas the Council Resolution of 28 June 1988 on the protection of the North Sea and of other waters in the Community [OJ 1988 C 209, p. 3] invited the Commission to submit proposals for measures required at Community level for the treatment of urban waste water;

...

Whereas to prevent the environment from being adversely affected by the disposal of insufficiently-treated urban waste water, there is a general need for secondary treatment of urban waste water;

Whereas it is necessary in sensitive areas to require more stringent treatment; whereas in some less sensitive areas a primary treatment could be considered appropriate;

...

Whereas it is necessary to monitor treatment plants, receiving waters and the disposal of sludge to ensure that the environment is protected from the adverse effects of the discharge of waste waters;

...’

- 3 According to Article 1 of that directive:

‘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.’

- 4 Article 2 of the directive provides:

‘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 (BOD<sub>5</sub>) of 60g 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;

...’

5 Article 3(1) of that directive provides:

‘Member States shall ensure that all agglomerations are provided with collecting systems for urban waste water,

— at the latest by 31 December 2000 for those with a population equivalent (p.e.) of more than 15 000,

and

— at the latest by 31 December 2005 for those with a p.e. of between 2 000 and 15 000.

...’

6 Article 4 of the directive 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 2000 for all discharges from agglomerations of more than 15 000 p.e.,

— 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 fresh-water 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. ...

...’

7 According to Article 8(1) of that directive:

‘Member States may, in exceptional cases due to technical problems and for geographically defined population groups, submit a special request to the Commission for a longer period for complying with Article 4.’

8 Article 15(1), first indent, and (4) of the same directive provides:

‘1. Competent authorities or appropriate bodies shall monitor:

— discharges from urban waste water treatment plants to verify compliance with the requirements of Annex I.B in accordance with the control procedures laid down in Annex I.D,

...

4. Information collected by competent authorities or appropriate bodies in complying with paragraphs 1, 2 and 3 shall be retained in the Member State and made available to the Commission within six months of receipt of a request.'

- 9 Section B of Annex I to the directive, entitled 'Discharge from urban waste water treatment plants to receiving waters', provides:

- '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.

...'

- 10 Section D of Annex I to Directive 91/271, concerning reference methods for monitoring and evaluation of results, is worded as follows:

- '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.

Member States shall provide the Commission with all relevant information concerning the applied method. If the Commission considers that the conditions set out in paragraphs 2, 3 and 4 are not met, it will submit an appropriate proposal to the Council.

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.

Good international laboratory practices aiming at minimising the degradation of samples between collection and analysis shall be applied.

- 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;
...	

4. The treated waste water shall be assumed to conform to the relevant parameters if, for each relevant parameter considered individually, samples of the water show that it complies with the relevant parametric value in the following way:

- (a) for the parameters specified in Table 1 and Article 2(7), a maximum number of samples which are allowed to fail the requirements, expressed in concentrations and/or percentage reductions in Table 1 and Article 2(7), is specified in Table 3;
- (b) for the parameters of Table 1 expressed in concentrations, the failing samples taken under normal operating conditions must not deviate from the parametric values by more than 100%. For the parametric values in concentration relating to total suspended solids deviations of up to 150% may be accepted;

...

5. Extreme values for the water quality in question shall not be taken into consideration when they are the result of unusual situations such as those due to heavy rain.'

11 Table 1 of Annex I to the directive contains the requirements for discharges from urban waste water treatment plants subject to Articles 4 and 5 of the directive. It appears as follows:

Parameters	Concentration	Minimum percentage of reduction [in relation to the load of the influent]	Reference method of measurement
Biochemical oxygen demand (BOD <sub>5</sub> at 20 °C) without nitrification ...	25 mg/l O <sub>2</sub>	70-90 ...	...
Chemical oxygen demand (COD)	125 mg/l O <sub>2</sub>	75	...
Total suspended solids	35 mg/l ... 35 under Article 4(2) (more than 10 000 p.e.) 60 under Article 4(2) (2 000-10 000 p.e.)	90 ... 90 under Article 4(2) (more than 10 000 p.e.) 70 under Article 4(2) (2 000-10 000 p.e.)	...

12 Table 3 of Annex I to Directive 91/271 provides inter alia that, where the number of samples taken in any year is between four and seven, the maximum permitted number of samples which fail to conform is set at one. Where the number of samples taken in any year is between eight and sixteen, the maximum permitted number of samples which fail to conform is set at two.

### The pre-litigation procedure

13 On 23 November 2009 the Commission sent a letter of formal notice to the Portuguese Republic informing it that it had failed to fulfil the obligations laid down in Articles 3, 4 and 10 of Directive 91/271 in relation to 186 agglomerations located in the territory of that Member State and inviting it, consequently, to submit its observations.

14 On 19 February 2010 the Portuguese Republic responded to that letter of formal notice by providing information concerning the 186 agglomerations in question and updated its response by a letter of 12 January 2012.

- 15 On 22 June 2012 the Commission sent the Portuguese Republic a reasoned opinion in which it indicated that, based on the information received, certain agglomerations regarded as being in breach of Article 3 of Directive 91/271 were, as at that date, in compliance with EU law requirements, but that the Portuguese Republic continued to be in breach of its obligations under Article 4 of Directive 91/271 with regard to 77 agglomerations whose p.e. was between 2 000 and 15 000. The Commission noted that those 77 agglomerations were discharging urban waste water into fresh-water or estuaries, both in normal areas and in sensitive areas, without guaranteeing an adequate level of treatment or reducing the biochemical oxygen demand (BOD) and chemical oxygen demand (COD), in accordance with the values listed in Annex I to Directive 91/271. The Commission requested the Portuguese Republic to take the necessary measures in order to comply with that reasoned opinion within two months of receipt of the opinion.
- 16 By a letter of 3 August 2012, the Portuguese Republic responded to the reasoned opinion, asserting that 17 of those 77 agglomerations were, as at that date, in compliance with Directive 91/271 and that more than half of the 77 agglomerations referred to in the reasoned opinion would, in the short term, comply with the provisions of that directive. It also undertook to keep the Commission regularly informed of changes in the situation.
- 17 As it had not received any information from the Portuguese Republic, the Commission, by letter of 23 October 2013, asked it about the extent to which its obligations had been fulfilled. The Portuguese Republic responded by a letter of 26 November 2013, indicating that 53 agglomerations were still not meeting the requirements of Directive 91/271.
- 18 The Portuguese Republic, by letters of 10 June and 4 July 2014, stated that 40 agglomerations referred to in the reasoned opinion now met the requirements of Directive 91/271 and that, with regard to the 37 agglomerations in which the infringement persisted, the situation in 15 of them would be resolved by the end of 2015, the other 22 agglomerations, however, remaining in a situation of non-compliance.
- 19 As it was not satisfied with the responses provided by the Portuguese Republic, the Commission decided to bring the present action.

## **The action**

### *Arguments of the parties*

- 20 By its application, the Commission claims that the Portuguese Republic has failed to fulfil its obligations under Article 4 of Directive 91/271 in relation to the treatment of urban waste waters in the following 52 agglomerations: Alvalade, Odemira, Loriga, Pereira do Campo, Vila Verde (PTAGL 420), Mação, Paço, Pontével, Vila Nova de São Bento, Castro Daire, Arraiolos, Cercal, Vale de Santarém, Castro Verde, Almodôvar, Ferreira do Alentejo, Vidigueira, Amares/Ferreiras, Alcácer do Sal, Amareleja, Gonsundeira, Salvaterra de Magos, Mogadouro, Melides, Vila Verde (PTAGL 421), Santiago do Cacém, Serpa, São Bartolomeu de Messines, Monchique, Montemor-o-Novo, Grândola, Estremoz, Maceira, Vendas Novas, Lousada, Felgueiras, Riachos, Tolosa, Meda, Alter do Chão, Tábua, Portel, Viana do Alentejo, Cinfaes, Vila de Prado, Ponte de Reguengo, Canas de Senhorim, Repeses, Mangualde, Nelas, Vila Viçosa and Santa Comba Dão.
- 21 The Commission submits that, under Article 4 of Directive 91/271, the Portuguese Republic had to guarantee, from 1 January 2006, secondary treatment or an equivalent treatment for discharges of urban waste waters originating from those agglomerations, complying with the values set out in Table 1 of Annex I to Directive 91/271. In that regard, the Commission argues that, in order to satisfy the requirements of Article 4 of that directive, the Portuguese Republic should have provided it with the



results of monitoring measures proving, pursuant to paragraph 3 of Annex I.D, that the water, collected at regular intervals in the outlet of treatment plants during the first year of operation, met the requirements of that directive.

- 22 The Commission thus considers that the infringement, which is general and persistent in many small agglomerations, is likely to cause irreparable damage to the environment. It also argues that the financial difficulties relied on by the Portuguese Republic during the pre-litigation procedure are not such as to justify the existence of the alleged infringement.
- 23 In its statement of defence, the Portuguese Republic states that, in its application, the Commission acknowledged that the failure to fulfil obligations under Article 4 of Directive 91/271 cannot be verified for 26 of the 52 agglomerations referred to in the application initiating proceedings, namely: Loriga, Paço, Vila Nova de São Bento, Cercal, Vale de Santarém, Castro Verde, Almodôvar, Amares/Ferreiras, Gonsundeira, Salvaterra de Magos, Mogadouro, Melides, Vila Verde-Minho, Santiago do Cacém, Serpa, São Bartolomeu de Messines, Vendas Novas, Lousada, Felgueiras, Riachos, Meda, Alter do Chão, Tábua, Vila de Prado, Mangualde and Nelas.
- 24 Moreover, the Portuguese Republic argues that, so far as concerns the agglomerations of Alvalade, Odemira, Pereira do Campo, Vila Verde — Sintra, Mação, Arraiolos, Ferreira do Alentejo, Vidigueira, Alcácer do Sal, Amareleja, Montemor-o-Novo, Grândola, Estremoz, Maceira, Portel, Cinfães, Canas de Senhorim, Repeses, Vila Viçosa and Santa Comba Dão, the works necessary to ensure that the urban waste water plants comply with the requirements of Directive 91/271 were under way as at the date on which it lodged its statement of defence and will, in any event, be completed before the end of 2015.
- 25 With regard to the agglomerations of Pontével, Castro Daire, Monchique, Tolosa, Viana do Alentejo and Ponte de Reguengo, the Portuguese Republic submits that the research and measures necessary in order to comply with the requirements of Article 4 of Directive 91/271 were, as at the date on which it lodged its statement of defence, at an advanced stage of implementation.
- 26 The Portuguese Republic explains that countless meetings have been held and that a large number of steps have been taken so as to ensure the setting of reasonable time-frames and the observance of the time-frames mentioned in the preceding paragraphs of the present judgment and indicates that, in order to ensure the implementation of projects in municipalities which were encountering financial difficulties, an extraordinary opinion of the Territorial Enhancement Operational Programme (TEOP) was published, guaranteeing the financing of 85% of the works at issue.
- 27 In its reply, the Commission maintains its action in respect of the 52 agglomerations referred to in the application and states, in particular, that, for the 26 agglomerations mentioned in paragraph 23 of the present judgment, the Portuguese Republic has attached no evidence to its statement of defence in support of its assertions. Thus, without information on the samples collected and on the methods of monitoring and evaluation regarding the agglomerations at issue, the Commission takes the view that the Portuguese Republic has failed to comply with the provisions of Directive 91/271. In that regard, the Commission states that the last information sent to it by the Portuguese Republic dates from 4 July 2014 and concerns the situation as at 30 June 2014.
- 28 In its rejoinder, the Portuguese Republic contends that the Commission received, on 22 December 2014, an additional reply to the reasoned opinion, in which it was provided with an update on the situation concerning the agglomerations at issue.
- 29 Using as a basis the new data transmitted to the Commission, the Portuguese Republic submits that the agglomerations of Loriga, Paço, Vila Nova de São Bento, Vale de Santarém, Gonsundeira, Salvaterra de Magos, Mogadouro, Serpa, São Bartolomeu de Messines, Riachos, Meda, Alter do Chão, Tábua and Mangualde have complied with the provisions of Directive 91/271.

30 So far as concerns the other agglomerations concerned by the present action, the Portuguese Republic contends that they are in a position to comply with the provisions of Directive 91/271 and that the monthly analytical data are in the course of being obtained or that compliance is, generally speaking, under way.

### *Findings of the Court*

31 As a preliminary point, it must be noted that, at the hearing before the Court, the Commission limited the subject matter of its action to 44 agglomerations, indicating that the action no longer concerned the agglomerations of Paço, Gonsundeira, Salvaterra de Magos, São Bartolomeu de Messines, Lousada, Felgueiras, Riachos or Meda.

32 It must also be borne in mind that it is common ground that all the agglomerations in respect of which the Commission is maintaining its action have a p.e. of between 2 200 and 13 400.

33 According to the Commission, the obligations of Member States under Article 4 of Directive 91/271 entail performing the controls provided for in Annex I.D to that directive, for which it is necessary to collect, over a period of one year, a minimum number of samples, varying according to the size of the relevant treatment plant, particularly during its first year of operation. As far as the Portuguese Republic is concerned, it argued, at the hearing, that the obligations arising under Article 4 of Directive 91/271 must be regarded as fulfilled as soon as a sample of the discharges of a treatment plant in operation reveals values falling within the parameters set out in that directive.

34 Article 4(1) of Directive 91/271 provides that ‘Member States shall ensure that urban waste water entering collecting systems shall before discharge be subject to secondary treatment or an equivalent treatment’ and stipulates that that treatment must be introduced, depending on the p.e. and discharge area of those waters, by 31 December 2000 or by 31 December 2005. Article 4(3) of that directive provides that discharges from the urban waste water treatment plants described in paragraph 1 of that article ‘shall satisfy the relevant requirements of section B of Annex I’ to the directive.

35 According to paragraph 1 of Annex I.B to Directive 91/271, ‘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’. Meanwhile, paragraph 2 of section B provides that ‘discharges from urban waste water treatment plants subject to treatment in accordance with Articles 4 and 5 [of that directive] shall meet the requirements shown in Table 1’.

36 The Court notes that Article 4 of Directive 91/271 makes no reference to Annex I.D thereto, which sets out the ‘reference methods for monitoring and evaluation of results’. Annex I.D addresses the need indicated in the eighth recital of the directive, according to which ‘it is necessary to monitor treatment plants, receiving waters and the disposal of sludge to ensure that the environment is protected from the adverse effects of the discharge of waste waters’ and forms part of the framework of the ongoing monitoring of discharges. In that regard, paragraph 3 of Annex I.D to Directive 91/271 determines the minimum number of samples to be collected each year and provides that, in certain cases, the results of one year affect the samples of the following year.

37 As the Advocate General observes in point 43 of his Opinion, Annex I.D refers to a continuing obligation aimed at ensuring that discharges satisfy ‘over time’ the quality requirements which they must have satisfied since the entry into operation of the treatment plant.

38 Therefore, although Article 4 of Directive 91/271 contains an obligation as to the result to be achieved with regard to the compliance of discharges from urban waste water treatment plants with the requirements of Annex I.B to that directive, it does not, however, require, for the purpose of proving such compliance, that samples be collected over a full year.



- 39 Accordingly, where a Member State is able to submit a sample meeting the requirements set out in Annex I.B to Directive 91/271, the obligations arising under Article 4 of that directive must be deemed to be satisfied.
- 40 In order to meet the objective of protecting the environment from the adverse effects of waste water discharges, as specified in Article 1 of Directive 91/271, the obligation in Article 4 thereof — according to which discharges of urban waste waters must be subject to treatment satisfying the requirements of Annex I.B — is secured over time through the monitoring of discharges from treatment plants, as provided for in the first indent of Article 15(1) of the directive, which makes express reference to Annex I.D thereto. In that respect, it must be borne in mind that the object of the present case is not to find that the Portuguese Republic has failed to fulfil its obligations under Article 15 of Directive 91/271.
- 41 In support of that interpretation, it must be stated that Articles 3 and 4 of Directive 91/271 impose on Member States the same deadlines for, as regards Article 3, providing agglomerations with a collecting system for urban waste water and, as regards Article 4, subjecting that water to secondary treatment or equivalent before discharge. Were the Commission's interpretation of Article 4 of Directive 91/271 to be accepted, the deadlines laid down in that article would have to be at one year's distance from those indicated in Article 3 of the directive, that one-year gap allowing Member States to carry out the collection of samples, in accordance with Annex I.D to the directive. However, no period additional to that granted in Article 3 of Directive 91/271 is provided to Member States for the purpose of complying with the requirements of Article 4 of the directive.
- 42 Moreover, although Article 8 of Directive 91/271 allows the time limit granted for complying with the requirements of Article 4 of the directive to be extended, such an extension may be granted only on the basis of a special request and, in any event, Article 4 makes no mention of an obligation to take into account a minimum number of samples to be collected by the Member State concerned during that additional period.
- 43 Nor can the Court accept the argument advanced by the Commission at the hearing that that year of sampling is justified by the 'principle of scaling', provided for in Article 10 of Directive 91/271, which requires seasonal variations of waste water discharges to be taken into account over a full year in order for it to be validly concluded that the requirements of Article 4 of Directive 91/271 have been satisfied.
- 44 Article 10 in fact provides that seasonal variations are to be taken into account in the design and construction of waste water treatment plants. Therefore, the 'principle of scaling' must be taken into account even before the entry into service of an urban waste water treatment plant.
- 45 Consequently, it must be held that Article 4 of Directive 91/271 requires Member States to ensure that, within the periods specified in that article, the agglomerations concerned subject urban waste water entering collecting systems provided to agglomerations in accordance with Article 3 of that directive to appropriate treatment and that such discharges satisfy the requirements of Annex I.B to the directive. That obligation does not mean that the collection of samples, provided for in Annex I.D to Directive 91/271, must span a full year in order for it to be established that the systems concerned are in compliance with the requirements of Annex I.B to the directive.
- 46 It is in the light of those considerations that it is appropriate to examine whether the present action for failure to fulfil obligations, in so far as it concerns the 44 agglomerations referred to in paragraph 31 of the present judgment, is well founded.
- 47 In that regard, it must be recalled that although, in proceedings brought under Article 258 TFEU for failure to fulfil obligations, it is for the Commission to prove the allegation that an obligation has not been fulfilled, by placing before the Court all the information required to enable the Court to

establish that the obligation has not been fulfilled, without the Commission being entitled to rely on any presumption, account should be taken of the fact that, where it is a question of checking that the national provisions intended to ensure effective implementation of a directive are applied correctly in practice, the Commission, which does not have investigative powers of its own in this area, is largely reliant on the information provided by complainants or by the Member State concerned (see, to that effect, judgment in *Commission v Portugal*, C-526/09, EU:C:2010:734, paragraph 21 and the case-law cited).

- 48 It follows, *inter alia*, that, where the Commission has adduced sufficient evidence to establish that the national provisions transposing a directive are not applied correctly in practice in the territory of the defendant Member State, it is for the latter to challenge in substance and in detail the information produced and the inferences drawn (see, to that effect, judgment in *Commission v Portugal*, C-526/09, EU:C:2010:734, paragraph 22 and the case-law cited).
- 49 It should also be noted that the question whether a Member State has failed to fulfil 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 (see, *inter alia*, judgments in *Commission v Greece*, C-440/06, EU:C:2007:642, paragraph 16, and *Commission v Belgium*, C-395/13, EU:C:2014:2347, paragraph 39).
- 50 In the present case, the reasoned opinion, dated 22 June 2012, set the Portuguese Republic a period of two months from receipt of that opinion for complying with its obligations under Article 4 of Directive 91/271. The period granted for that compliance thus expired on 22 August 2012.
- 51 In respect of the agglomerations of Alvalade, Odemira, Pereira do Campo, Vila Verde (PTAGL 420), Mação, Pontével, Castro Daire, Arraiolos, Ferreira do Alentejo, Vidigueira, Alcácer do Sal, Amareleja, Monchique, Montemor-o-Novo, Grândola, Estremoz, Maceira, Portel, Viana do Alentejo, Cinfães, Ponte de Reguengo, Canas de Senhorim, Repeses, Vila Viçosa, Santa Comba Dão and Tolosa, the Portuguese Republic indicates, in its statement of defence, that, as at the date on which it lodged that defence, works on the treatment plants were under way or scheduled in order to comply with the obligations of Article 4 of Directive 91/271. It is therefore established that those agglomerations were not in compliance, at the end of the period set by the reasoned opinion, with the obligations under Article 4, since they did not have operational waste water treatment plants.
- 52 So far as concerns the agglomerations of Loriga, Cercal, Vale de Santarém, Castro Verde, Almodôvar, Amares/Ferreiras, Mogadouro, Melides, Vila Verde (PTAGL 421), Serpa, Vendas Novas, Vila de Prado and Nelas, it is apparent from the documents submitted to the Court, in particular from two tables originating from the Portuguese authorities and reporting on the compliance with Article 4 of Directive 91/271 of the agglomerations as at 30 June 2014 and as at 10 December of the same year, that the works necessary for meeting the requirements under that article either were completed in 2013 or 2014 or would be completed in 2014 or 2015. It is therefore settled that those agglomerations were likewise not in compliance with the obligations arising under Article 4 of Directive 91/271 on the expiry of the period granted to the Portuguese Republic for complying with the requirements of that article.
- 53 In relation to the agglomerations of Vila Nova de São Bento, Santiago do Cacém, Alter do Chão, Tábua and Mangualde, it is apparent from the tables mentioned in the previous paragraph that those agglomerations had, from 2012 — or even from before 2012 — operable waste water treatment plants. On the assumption that those works were completed in the course of 2012 or even earlier, the results of an initial sample could in fact have been transmitted by the Portuguese Republic to the Commission before the expiry of the period prescribed in the reasoned opinion, namely 22 August 2012. However, the Portuguese Republic did not produce, before the Court, any relevant data in that regard. In those circumstances, the Commission must be regarded as demonstrating the merits of its complaint in relation to those five agglomerations.

54 In those circumstances, it must be held that, by not ensuring that discharges from urban waste water treatment plants were subject to an adequate level of treatment, meeting the relevant requirements of Annex I.B to Directive 91/271, in the agglomerations of Alvalade, Odemira, Pereira do Campo, Vila Verde (PTAGL 420), Mação, Pontével, Castro Daire, Arraiolos, Ferreira do Alentejo, Vidigueira, Alcácer do Sal, Amareleja, Monchique, Montemor-o-Novo, Grândola, Estremoz, Maceira, Portel, Viana do Alentejo, Cinfães, Ponte de Reguengo, Canas de Senhorim, Repeses, Vila Viçosa, Santa Comba Dão, Tolosa, Loriga, Cercal, Vale de Santarém, Castro Verde, Almodôvar, Amares/Ferreiras, Mogadouro, Melides, Vila Verde (PTAGL 421), Serpa, Vendas Novas, Vila de Prado, Nelas, Vila Nova de São Bento, Santiago do Cacém, Alter do Chão, Tábua and Mangualde, the Portuguese Republic has failed to fulfil its obligations under Article 4 of that directive.

### **Costs**

55 Under Article 138(1) of the Rules of Procedure of the Court of Justice, the unsuccessful party must be ordered to pay the costs if they have been applied for in the other party's pleadings. Since the Commission has applied for costs and the Portuguese Republic has been unsuccessful, the latter must be ordered to pay the costs.

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

1. **Declares that, by not ensuring that discharges from urban waste water treatment plants were subject to an adequate level of treatment, meeting the relevant requirements of Annex I.B to 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, in the agglomerations of Alvalade, Odemira, Pereira do Campo, Vila Verde (PTAGL 420), Mação, Pontével, Castro Daire, Arraiolos, Ferreira do Alentejo, Vidigueira, Alcácer do Sal, Amareleja, Monchique, Montemor-o-Novo, Grândola, Estremoz, Maceira, Portel, Viana do Alentejo, Cinfães, Ponte de Reguengo, Canas de Senhorim, Repeses, Vila Viçosa, Santa Comba Dão, Tolosa, Loriga, Cercal, Vale de Santarém, Castro Verde, Almodôvar, Amares/Ferreiras, Mogadouro, Melides, Vila Verde (PTAGL 421), Serpa, Vendas Novas, Vila de Prado, Nelas, Vila Nova de São Bento, Santiago do Cacém, Alter do Chão, Tábua and Mangualde, the Portuguese Republic has failed to fulfil its obligations under Article 4 of that directive;**
2. **Orders the Portuguese Republic to pay the costs.**

[Signatures]