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JUDGMENT OF THE COURT (Ninth Chamber)

4 May 2017 *

(Failure of a Member State to fulfil obligations — Directive 91/271/EEC — Articles 3 to 5 and 10 — Annex I, Sections A, B and D — Urban waste-water treatment — Collecting systems — Secondary or equivalent treatment — More stringent treatment of discharges into sensitive areas)

In Case C-502/15,

ACTION for failure to fulfil obligations under Article 258 TFEU, brought on 22 September 2015,

European Commission, represented by K. Mifsud-Bonnici and E. Manhaeve, acting as Agents,

applicant,

v

United Kingdom of Great Britain and Northern Ireland, represented by J. Kraehling, acting as Agent, and by S. Ford, Barrister,

defendant,

THE COURT (Ninth Chamber),

composed of E. Juhász, President of the Chamber, C. Vajda and C. Lycourgos (Rapporteur), Judges,

Advocate General : M. Bobek,

Registrar: A. Calot Escobar,

having regard to the written procedure,

* Language of the case: English.

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 asks the Court to declare that:
 - by not ensuring that the waters collected in a combined urban waste waters and rainwater system in the Gowerton and Llanelli agglomerations are retained and conducted for treatment, in compliance with the requirements of Council Directive 91/271/EEC of 21 May 1991 concerning urban waste-water treatment (OJ 1991 L 135, p. 40), the United Kingdom of Great Britain and Northern Ireland (‘the United Kingdom’) has failed to fulfil its obligations under Articles 3, 4 and 10 of, and Sections A and B of Annex I to, that directive;
 - by either not putting in place secondary or equivalent treatment or not providing sufficient evidence to demonstrate compliance in this respect with Directive 91/271 with regard to the Banchory, Stranraer and Ballycastle agglomerations as well as by not subjecting the urban waste water in the Gibraltar agglomeration to any treatment, the United Kingdom has failed to fulfil its obligations under Article 4 of, and Sections B and D of Annex I to, Directive 91/271; and
 - by not ensuring that urban waste water entering collecting systems from the Tiverton, Durham (Barkers Haugh), Chester-le-Street, Islip, Broughton Astley, Chilton, Witham and Chelmsford agglomerations, before discharge into sensitive areas, be subject to more stringent treatment than that described in Article 4 of Directive 91/271, in accordance with the requirements of Section B of Annex I to that directive, the United Kingdom has failed to fulfil its obligations under Article 5 of, and Sections B and D of Annex I to, Directive 91/271.

Legal context

- 2 The eighth recital of Directive 91/271 states, ‘...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 Article 3 of that directive provides:
 - ‘1. 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.

For urban waste water discharging into receiving waters which are considered “sensitive areas” as defined under Article 5, Member States shall ensure that collection systems are provided at the latest by 31 December 1998 for agglomerations of more than 10 000 p.e.

Where the establishment of a collecting system is not justified either because it would produce no environmental benefit or because it would involve excessive cost, individual systems or other appropriate systems which achieve the same level of environmental protection shall be used.

...

2. Collecting systems described in paragraph 1 shall satisfy the requirements of Annex I(A). ...

...’

4 Article 4 of Directive 91/271 states:

‘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 Annex I.B. ...

4. The load expressed in p.e. shall be calculated on the basis of the maximum average weekly load entering the treatment plant during the year, excluding unusual situations such as those due to heavy rain.’

5 Article 5 of that directive provides:

‘1. For the purposes of paragraph 2, Member States shall by 31 December 1993 identify sensitive areas according to the criteria laid down in Annex II.

2. Member States shall ensure that urban waste water entering collecting systems shall before discharge into sensitive areas be subject to more stringent treatment than that described in Article 4, by 31 December 1998 at the latest for all discharges from agglomerations of more than 10 000 p.e.

...

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

...

5. Discharges from urban waste water treatment plants which are situated in the relevant catchment areas of sensitive areas and which contribute to the pollution of these areas shall be subject to paragraphs 2, 3 and 4.

...

6. Member States shall ensure that the identification of sensitive areas is reviewed at intervals of no more than four years.

7. Member States shall ensure that areas identified as sensitive following review under paragraph 6 shall within seven years meet the above requirements.

...’

6 Article 10 of Directive 91/271 provides:

‘Member States shall ensure that the urban waste water treatment plants built to comply with the requirements of Articles 4, 5, 6 and 7 are designed, constructed, operated and maintained to ensure sufficient performance under all normal local climatic conditions. When designing the plants, seasonal variations of the load shall be taken into account.’

7 Article 15 of that directive lays down the monitoring requirements for the competent authorities or appropriate bodies in respect of discharges from urban waste water treatment plants, which must comply with the control procedures laid down in Section D of Annex I to Directive 91/271.

8 Annex I to that directive, entitled, ‘Requirements for urban waste water’, provides, in Section A, entitled ‘Collecting systems’:

‘Collecting systems shall take into account waste water treatment requirements.

The design, construction and maintenance of collecting systems shall be undertaken in accordance with the best technical knowledge not entailing excessive costs, notably regarding:

- volume and characteristics of urban waste water,
 - prevention of leaks,
 - limitation of pollution of receiving waters due to storm water overflows.’
- 9 Section B of Annex I to Directive 91/271, entitled ‘Discharge from urban waste water treatment plants to receiving waters’, sets the requirements that must be satisfied by discharges from urban waste water treatment plants into receiving waters.
- 10 Section D of Annex I to Directive 91/271 lays down the procedures for monitoring the waste water discharges. Point 3 of Section D provides that samples must be collected at regular intervals during the year, that is 12 samples during the first year in agglomerations with a p.e. from 2 000 to 9 999, and four samples in subsequent years, if it can be shown that the water during the first year complies with the provisions of that directive. If one sample of the four fails, 12 samples must be taken in the year that follows. For agglomerations with a p.e. from 10 000 to 49 999, 12 samples per year must be taken.

Pre-litigation procedure

Letters of formal notice

- 11 In the first place, following various citizens’ complaints, the Commission sent a letter of formal notice, on 26 June 2009, to the United Kingdom concerning its obligation to ensure the collection and treatment of urban waste water in the Gowerton and Llanelli agglomerations. The Commission took the view that the United Kingdom had failed to ensure that the waters collected in a combined urban waste waters and rainwater system in those two agglomerations were retained and conducted for treatment in compliance with the requirements of Articles 3 to 5 and 10 of, and Sections A and B of Annex I to, Directive 91/271.
- 12 The United Kingdom replied by a letter dated 28 September 2009 in which it acknowledged that the collecting systems serving those agglomerations were not performing as intended in relation to the number of spills occurring at certain overflows. The United Kingdom stated in that letter that, first, its authorities were conducting investigations to establish the cause of the underperformance of those systems and, secondly, they were progressing enforcement action against the sewerage undertaker under the United Kingdom’s domestic controls.

- 13 By letters of 21 May 2010, 4 February 2011, 16 February 2012 and 13 September 2012, the United Kingdom set out the measures which it was taking to address that situation.
- 14 In a letter dated 12 September 2013, the United Kingdom provided updated figures for recorded spills at modelled assets in the Gowerton and Llanelli agglomerations since 2010 and also described predicted spills based on a programme of works to secure compliance with Directive 91/271 by 2025. In January 2014, the United Kingdom stated to the Commission that full compliance with that directive was envisaged rather in 2020.
- 15 In the second place, the Commission sent the United Kingdom a letter of formal notice on 21 June 2013, by which it complained that the United Kingdom had failed to provide secondary or equivalent treatment, as required under Article 4 of Directive 91/271, for the urban waste water discharges emanating from 26 agglomerations. In that letter, the Commission also contended that the situation in Gibraltar did not comply with Article 4 of that directive and requested clarification and information concerning the United Kingdom's application of Article 5 of that directive with regard to a large number of agglomerations.
- 16 The United Kingdom replied by letter dated 18 October 2013. The Commission assessed that reply and considered that the United Kingdom remained in breach of Article 4 of Directive 91/271 in respect of four of the agglomerations listed in the letter of formal notice of 21 June 2013. The Commission also noted that there was no urban waste water treatment plant in Gibraltar and that Gibraltar did not, therefore, comply with Article 4.
- 17 In addition, the United Kingdom explained that the reporting exercise on which the letter of formal notice was based contained wrong data regarding designation of the sensitive areas for 92 out of the 127 agglomerations indicated as non-compliant. The United Kingdom also stated that there had been errors in data regarding other agglomerations and that certain agglomerations were compliant with Directive 91/271. Having assessed the data provided, the Commission considered that the United Kingdom was still in breach of Article 5 of that directive in respect of 24 agglomerations.

The reasoned opinion

- 18 By a letter dated 10 July 2014, received on 11 July 2014 by the United Kingdom, the Commission sent a reasoned opinion under Article 258 TFEU. According to that opinion (i) the United Kingdom had failed to comply with Articles 3, 4 and 10 of, and Sections A and B of Annex I to, Directive 91/271, as regards the Gowerton and Llanelli agglomerations, (ii) it had failed to apply correctly Article 4 of, and Sections B and D of Annex I to, that directive, as regards four agglomerations and Gibraltar and (iii) it failed to apply correctly Article 5 of, and Sections B and D of Annex I, to that directive, as regards 24 agglomerations. The Commission called

on the United Kingdom to take the necessary measures to comply with the reasoned opinion within two months of receipt.

- 19 In its reply to the reasoned opinion, sent on 11 September 2014, and in an additional reply of 27 April 2015, the United Kingdom, first, acknowledged that the urban waste water treatment systems in the Gowerton and Llanelli agglomerations had not performed as intended and stated that compliance with Directive 91/271 would not be fully achieved until the end of 2020. Secondly, as regards the other sites, which, according to the Commission, did not comply with Article 4 of that directive, the United Kingdom either set out the works undertaken in order to comply with Directive 91/271 or provided the date on which data relating to a full year of analyses would be available. Thirdly, for the 24 agglomerations designated as not complying with Article 5 of Directive 91/271, the United Kingdom explained the nature of the works undertaken in order to comply and set out the date on which data relating to a full year of analyses would be available. In addition, it stated that, as regards the Witham and Chelmsford agglomerations, the boundary of the sensitive area was incorrectly drawn.
- 20 Since it was not satisfied with the United Kingdom's replies to that reasoned opinion, the Commission brought the present action.

The request seeking the production of evidence after the closure of the written part of the procedure

- 21 After the closure of the written procedure on 7 March 2016, the United Kingdom sought leave, by a letter dated 1 February 2017, to produce new documents pursuant to Article 128(2) of the Rules of Procedure of the Court. A time limit was prescribed within which the Commission could comment on those documents, which it did on 21 February 2017.
- 22 By decision of 28 February 2017, the President of the Chamber admitted those new documents as evidence in the examination of the present action for failure to fulfil obligations.

The action

Preliminary observations

- 23 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 it 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 (judgment of 2 December 2010, *Commission v Portugal*, C-526/09, not published, EU:C:2010:734, paragraph 21 and the case-law cited).

- 24 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 (judgment of 2 December 2010, *Commission v Portugal*, C-526/09, not published, EU:C:2010:734, paragraph 22 and the case-law cited).
- 25 In addition, it is for the Court to determine whether or not the alleged breach of obligations exists, even if the State concerned does not deny the breach (see, in particular, judgment of 23 February 2006, *Commission v Germany*, C-43/05, not published, EU:C:2006:145, paragraph 11).
- 26 It should also be borne in mind 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, in particular, judgment of 16 June 2005, *Commission v France*, C-191/04, not published, EU:C:2005:393, paragraph 17).
- 27 In the present case, the reasoned opinion dated 10 July 2014, received by the United Kingdom on 11 July 2014, set the latter a two-month period for complying with the obligations stemming from Directive 91/271. Consequently, the existence of the alleged failure to fulfil obligations must be assessed as at 11 September 2014.
- 28 The present action must be examined in the light of those considerations.

The first complaint, alleging the failure to apply correctly Articles 3, 4 and 10 of, and Sections A and B of Annex I to, Directive 91/271, as regards the Gowerton and Llanelli agglomerations

Arguments of the parties

- 29 The Commission complains that the United Kingdom has failed to fulfil its obligations under Articles 3, 4 and 10 of, and Sections A and B of Annex I to, Directive 91/271 by not ensuring that the waters collected in a combined urban waste waters and rainwater system in the Gowerton and Llanelli agglomerations are retained and conducted for treatment, in compliance with the requirements of that directive.
- 30 According to the Commission, the pre-litigation procedure disclosed that there were a high number of spills before treatment throughout the collecting systems,

in waters designated for numerous interests, in particular, under Directive 2009/147/EC of the European Parliament and of the Council of 30 November 2009 on the conservation of wild birds (OJ 2010 L 20, p. 7) and Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora (OJ 1992 L 206, p. 7).

- 31 The Commission observes, in particular, that the waters within the Burry Inlet, which receive those spills, were designated on 11 October 1999 as ‘shellfish waters’ under Council Directive 79/923/EEC of 30 October 1979 on the quality required of shellfish waters (OJ 1979 L 281, p. 47) and that those waters remain protected areas under Directive 2000/60/EC of the European Parliament and of the Council of 23 October 2000 establishing a framework for Community action in the field of water policy (OJ 2000 L 327, p. 1), which repealed Directive 79/923. According to the Commission, it is clear that the spills from the Gowerton and Llanelli agglomerations contribute to the deterioration of the quality of those waters.
- 32 The Commission states that the quality of the water and the E. coli levels within shellfish are monitored in those protected areas for the placing of the harvested shellfish on the market. It observes in that regard that the decline in cockle numbers and their contamination has had a negative economic impact on local shellfisheries and an impact on some of the bird species that depend on that species for food. The Commission mentions that elevated E. coli levels, leading to the closure of shellfisheries, appear to be linked to faecal contamination, which emanates from a combination of urban waste water and agricultural run-off linked to livestock.
- 33 The Commission acknowledges, in respect of the works underway at those sites, that the recourse to the ‘sustainable drainage systems’ (‘SuDS’), advanced by the United Kingdom, is an innovative solution which seeks to remove surface water from collecting systems where possible. Nevertheless, it stresses that works to start implementing the solution proposed by the United Kingdom were undertaken too late, which is the reason why compliance is not due before the year 2020.
- 34 The Commission submits that the United Kingdom’s argument that the development of SuDS was the only solution which would be in line with the ‘best technical knowledge not entailing excessive costs ... concept’, referred to in Section A of Annex I to Directive 91/271, cannot be accepted in the present case. In any event, the Commission expresses the view that the United Kingdom has failed to establish that the costs of achieving a greater reduction in spill frequencies and volumes would be disproportionate to the benefits for the environment.
- 35 The United Kingdom acknowledges that the Gowerton and Llanelli agglomerations do not satisfy the requirements of Directive 91/271 and states that the current level of spills arises because of the volume of surface water, which is not effluent, being generated within the catchment and entering the system.

- 36 The United Kingdom emphasises that it has embarked upon a programme of works in those two agglomerations which will make it possible to ensure that they comply with Directive 91/271 by the year 2020, by significantly reducing spill frequencies and volumes from the collecting system prior to treatment. It states that that programme is focused on the retro-fitting of SuDS, complemented by optimisation of existing assets and the installation of some small storage tanks.
- 37 The United Kingdom contends that those works are consistent with the concept of ‘best technical knowledge not entailing excessive costs’, referred to in Section A of Annex I to Directive 91/271, and that it would not be consistent with that concept to go beyond the measures it plans to take, given the minimal environmental impact and excessive and progressively increasing costs entailed in so doing. In that regard, the United Kingdom states, in particular, that the predicted reduction in spill levels will be unlikely to achieve the total absence of faecal coliforms in shellfish flesh, since microbial inputs to the estuary arise from a number of sources, including intensive grazing.
- 38 The United Kingdom also disputes the Commission’s argument that the cockle numbers in the Burry Inlet have drastically declined due in part to elevated *E. coli* levels, because studies have confirmed that cockle mortalities in that area were primarily to be linked to biological factors, including natural population dynamics. The United Kingdom states that, nevertheless, the SuDS programme will contribute to a reduction in the average concentration of bacteria, including *E. coli*, in shellfish waters.
- 39 The United Kingdom further contends that, first, the completion of the works involves particular challenges which have been encountered at those sites, some of which only became evident over time and, secondly, that the initial assessments of the performance of the SuDS indicate that the schemes are significantly outperforming expectations, and that asset performance continues to improve over time.

Findings of the Court

- 40 First of all, it must be pointed out that it is common ground that the Gowerton and Llanelli agglomerations have a p.e. of more than 15 000.
- 41 In accordance with Article 3(1) and (2) of Directive 91/271, read in conjunction with Section A of Annex I to that directive, agglomerations must be provided with collecting systems for urban waste water, the design, construction and maintenance of which must be undertaken in accordance with the ‘best technical knowledge not entailing excessive costs’, notably regarding volume and characteristics of urban waste water, prevention of leaks and limitation of pollution of receiving waters due to storm water overflows.
- 42 In its reply dated 11 September 2014 to the reasoned opinion, the United Kingdom contends that the number of spills exceeds that which was anticipated when the

collection systems were designed, with the result that those systems do not allow the waters either to be retained or to be conducted for treatment. The United Kingdom states that, as at that date, an ambitious programme of works had been embarked upon in order to bring the situation of the Gowerton and Llanelli agglomerations into compliance with Directive 91/271 by the year 2020, which it confirms in its defence and in a letter sent to the Commission on 31 January 2017, forwarded to the Court.

- 43 It follows that the United Kingdom does not deny that, as at the date on which the period specified in the reasoned opinion expired, the situation of those agglomerations did not comply with the obligations stemming from Article 3 of Directive 91/271, read in conjunction with Section A of Annex I to that directive.
- 44 Since the alleged infringement must be examined as at 11 September 2014, it must be found that the Gowerton and Llanelli collecting systems could not be considered installations complying with the concept of ‘best technical knowledge not entailing excessive costs’, within the meaning of Section A of Annex I to Directive 91/271. The fact that the United Kingdom embarked upon a large programme of works proves that there were technological solutions in order to overcome the problem of excessive spills before treatment, into waters having numerous interests, of waste waters from the Gowerton and Llanelli agglomerations, but that they had not been applied. In addition, the costs of those works cannot be regarded as excessive given that the United Kingdom has taken the decision to implement them (see, by analogy, judgment of 18 October 2012, *Commission v United Kingdom*, C-301/10, EU:C:2012:633, paragraph 90).
- 45 It should be borne in mind that, under Article 4 of Directive 91/271, the agglomerations concerned must subject urban waste water entering their collecting systems to secondary treatment or an equivalent treatment enabling those waters to be discharged while satisfying the requirements of Section B of Annex I to that directive and, in accordance with Article 10 of Directive 91/271, they must be equipped with treatment plants designed, constructed, operated and maintained to ensure sufficient performance under all normal local climatic conditions.
- 46 Since, on the expiry of the period specified in the reasoned opinion, the Gowerton and Llanelli agglomerations did not have collection systems allowing all the urban waste waters to be retained and conducted for treatment, the obligation to subject all those waters to secondary or equivalent treatment, as provided for in Articles 4 and 10 of Directive 91/271, was not, therefore, a fortiori complied with (see, by analogy, judgment of 25 October 2007, *Commission v Greece*, C-440/06, not published, EU:C:2007:642, paragraph 25).
- 47 Furthermore, the arguments relied on by the United Kingdom in order to justify the failure to fulfil its obligations under Directive 91/271 cannot succeed.

- 48 It must be noted that the EU legislature, conscious of the scope of the infrastructure work required for the application of Directive 91/271 and the costs of its full implementation, granted the Member States a period of several years to carry out their obligations. In any event, according to the settled case-law of the Court, a Member State cannot plead difficulties in its domestic legal order to justify a failure to observe obligations arising under EU law (judgment of 6 November 2014, *Commission v Belgium*, C-395/13, EU:C:2014:2347, paragraph 51).
- 49 In the light of the foregoing considerations, it must be found that by not ensuring that the waters collected in a combined urban waste waters and rainwater system in the Gowerton and Llanelli agglomerations are retained and conducted for treatment, in compliance with the requirements of Directive 91/271, the United Kingdom has failed to fulfil its obligations under Articles 3, 4 and 10 of, and Sections A and B of Annex I to, that directive.

The second complaint, alleging a failure to fulfil the obligations stemming from Article 4 of, and Sections B and D of Annex I to, Directive 91/271, as regards the Ballycastle and Gibraltar agglomerations

Arguments of the parties

- 50 The Commission submits that the United Kingdom has failed to fulfil its obligations under Article 4 of, and Sections B and D of Annex I to, Directive 91/271 by either not putting in place secondary or equivalent treatment or not providing sufficient evidence to demonstrate the compliance of the installations of the Ballycastle agglomeration with that directive, and by not subjecting the urban waste water in the Gibraltar agglomeration to any treatment.
- 51 In its application, the Commission also submitted that the United Kingdom had failed to fulfil its obligations as regards the Banchory and Stranraer agglomerations. However, after obtaining from the United Kingdom data for a calendar year of samples, the Commission decided in its reply to withdraw the complaints against those two agglomerations in the context of the present action.
- 52 As regards the Ballycastle agglomeration, which should have been brought into compliance with Directive 91/271 by 31 December 2005 at the latest, the Commission observes that, in its reply of 11 September 2014 to the reasoned opinion, the United Kingdom states that the works in order to bring the agglomeration into compliance with that directive would be completed for September 2017.
- 53 The Commission also submits that the United Kingdom failed to fulfil its obligations under Directive 91/271, since Gibraltar has no urban waste water treatment plant, while the deadline for compliance with the directive was 31 December 2000. The Commission emphasises that, in its reply of 11 September 2014 to the reasoned opinion, the United Kingdom contended that a

treatment plant was expected to be in operation in Gibraltar by late 2016 at the latest.

- 54 The United Kingdom states, first, that Gibraltar does not discharge its urban waste waters into fresh water and estuaries, as the Commission submits in its application, but into coastal waters. Secondly, the United Kingdom accepts that the Ballycastle and Gibraltar agglomerations will satisfy the requirements of Directive 91/271 only by late 2017. In a letter sent to the Commission on 31 January 2017 forwarded to the Court, the United Kingdom states that Gibraltar is scheduled to be compliant by the end of 2018.
- 55 As regards the Ballycastle agglomeration, the United Kingdom explains that the purchase of land required for the upgrade of the Ballycastle treatment works has been problematic and confirms that measures have been adopted to ensure that that installation is compliant by late 2017.
- 56 As regards the situation of Gibraltar, the United Kingdom emphasises that issues attributed to Gibraltar's distinctive geographical features, exceptionally high population density, requiring the reclamation of land from the sea, and uncommon use of sea water for sanitary purposes, have delayed the start of the works. It maintains that the requirements of Article 4 of Directive 91/271 and those of Section B of Annex I to that directive will be fully complied with by late 2017. The United Kingdom adds that the Gibraltar competent authority will then be able, in accordance with the requirements of Article 15 of that directive, to monitor discharges from its plant to verify compliance with the requirements of Section B of Annex I to Directive 91/271, in accordance with the control procedures laid out in Section D of Annex I to that directive.
- 57 In that regard, the United Kingdom observes, in respect of both the Ballycastle and Gibraltar agglomerations, that the fact that it had not collected monitoring data at regular intervals as required under Section D of Annex I to Directive 91/271 constitutes an infringement not of Article 4 of that directive, but of Article 15 which has not, however, been alleged by the Commission in its application.

Findings of the Court

- 58 The Court points out that, during the written procedure before it, the Commission withdrew the forms of order sought in its application with regard to the Banchory and Stranraer agglomerations. It maintained, by contrast, its action as regards the Ballycastle and Gibraltar agglomerations, which have a p.e. of more than 10 000 and 15 000, respectively.
- 59 Article 4 of Directive 91/271 requires Member States to ensure that, within the periods specified in that article, the agglomerations concerned make urban waste water, entering the collecting systems provided to agglomerations in accordance with Article 3 of that directive, subject to appropriate treatment and that such

discharges satisfy the requirements of Section B of Annex I to the directive. Section D of Annex I to that directive sets out the minimum requirements to be met by the water monitoring method adopted by the Member States.

- 60 As regards the Ballycastle and Gibraltar agglomerations, the United Kingdom does not deny that, at the end of the period specified in the reasoned opinion, the respective situations of those agglomerations did not comply with Directive 91/271, but it puts forward certain practical difficulties in order to justify the delay in the works necessary to remedy that failure to comply.
- 61 It is indeed apparent from the documents before the Court that, on 11 September 2014, the date on which the period specified in the reasoned opinion expired, first, the Ballycastle treatment plant needed upgrading because secondary treatment had not been put in place there and, secondly, that there was no treatment plant in Gibraltar. It must, therefore, be found that the situation of those two agglomerations did not comply, as at that date, with Article 4 of, and Section B of Annex I to, Directive 91/271. The United Kingdom's argument that the failure to comply with its obligations is linked to difficulties in its domestic legal order cannot succeed for the same reasons as those set out in paragraph 48 above.
- 62 As regards the alleged infringement of Section D of Annex I to Directive 91/271, the Commission states, in paragraphs 42 and 50 of its application, that the control procedures referred to in that provision are linked to Article 15 of that directive, which sets out the monitoring requirements for discharges from urban waste water treatment plants.
- 63 It must be pointed out in that regard that the Court has held, in paragraph 40 of its judgment of 28 January 2016, *Commission v Portugal* (C-398/14, EU:C:2016:61), that the obligation in Article 4 of Directive 91/271 — according to which discharges of urban waste waters must be subject to treatment satisfying the requirements of Section B of Annex I to that directive — is secured over time through the monitoring of discharges from treatment plants, as provided for in the first indent of Article 15(1) of that directive, which makes express reference to Section D of Annex I thereto. Consequently, the failure to comply with Section D of Annex I to that directive may be examined only in conjunction with the allegation of the infringement of Article 15 of that directive.
- 64 The second complaint must, therefore, be rejected in so far as it relates to an infringement of the control procedures laid down in Section D of Annex I to Directive 91/271, since, in its application, the Commission does not claim that the Court should declare that there has been an infringement of the monitoring obligation under Article 15 of that directive.
- 65 In the light of the foregoing considerations, it must be found that by not putting in place secondary treatment for the urban waste water in the Ballycastle agglomeration and by not subjecting the urban waste water in the Gibraltar agglomeration to any treatment, the United Kingdom has failed to fulfil its

obligations under Article 4 of, and Section B of Annex I to, Directive 91/271. The second complaint must be rejected as to the remainder.

The third complaint, alleging a failure to fulfil the obligations stemming from Article 5 of, and Sections B and D of Annex I to, Directive 91/271, as regards the Tiverton, Durham (Barkers Haugh), Chester-le-Street, Islip, Broughton Astley, Chilton, Witham and Chelmsford agglomerations

Arguments of the parties

- 66 The Commission submits that the United Kingdom has failed to fulfil its obligations under Article 5 of, and Sections B and D of Annex I to, Directive 91/271, by not ensuring that urban waste water entering collecting systems from the Durham (Barkers Haugh), Chester-le-Street, Chilton, Tiverton, Broughton Astley, Islip, Witham and Chelmsford agglomerations, before discharge into sensitive areas, be subject to more stringent treatment than that described in Article 4 of that directive.
- 67 The Commission states that those eight agglomerations discharge their waters into areas designated as sensitive under Directive 91/271 and require the installation of tertiary treatment designed to remove any phosphorus from those urban waste waters.
- 68 The Commission states, in particular, that the Durham (Barkers Haugh) and Chester-le-Street agglomerations discharge their waste waters into the river Wear, whereas the Tiverton, Broughton Astley, Islip and Chilton agglomerations discharge their waste waters into the Rivers Creedy, Soar, Nene and Skerne (Tees), respectively.
- 69 The Commission states that although the United Kingdom contends that the works required to ensure compliance with Article 5 of Directive 91/271 are planned or underway at Tiverton and Broughton Astley, until the works are completed and a full year's data showing compliance with the requirements of that directive is provided, the situation in those agglomerations does not comply with that directive.
- 70 Similarly, the Commission submits that, even if the installation of tertiary treatment works serving the Durham (Barkers Haugh), Chester-le-Street, Islip and Chilton agglomerations were complete, as the United Kingdom contends, the situation of those agglomerations may not be regarded as complying with the requirements of Directive 91/271 in the absence of a full year's data.
- 71 In that regard, the Commission submits that the fact that a treatment plant exists and its operation has been established by means of a sampling listing, the specific values of which are in compliance with the requirements of Table 1 of Annex I to Directive 91/271, is not sufficient to demonstrate that the treatment of urban waste water satisfies the requirements of that directive. Only the taking of a minimum of

12 samples would enable the proper functioning of treatment plants to be checked. It emphasises that the Court validated that point of view in paragraph 48 of the judgment of 15 October 2015, *Commission v Greece* (C-167/14, not published, EU:C:2015:684).

- 72 As regards the Witham and Chelmsford agglomerations, it is apparent from the United Kingdom's letters of 11 September 2014 and 27 April 2015 that the discharges into a sensitive area from those two agglomerations allegedly result from an error in mapping the boundary of the Rivers Can, Wid and Chelmer Sensitive Area, designated as such on 30 July 1998. While the Commission understands that that infringement of Directive 91/271 may be caused by a mapping error, it considers that, at the time of lodging its application, that error was not rectified and that the discharges into a sensitive area are ongoing whereas the deadline for compliance was 30 July 2005.
- 73 The United Kingdom states that tertiary treatment had been installed in December 2015 in the Tiverton and Broughton Astley agglomerations and that the first samples produced results which were below the maximum permitted level in Directive 91/271, thereby showing their compliance with Article 5 of that directive.
- 74 As regards the Durham (Barkers Haugh), Chester-Le-Street and Chilton agglomerations, the United Kingdom concedes that, on 11 September 2014, the situation in those agglomerations did not comply with Article 5 of Directive 91/271, but contends that that is no longer the case now. In that regard, it states that improvement works were completed at Durham (Barkers Haugh) and at Chester-le-Street by 31 December 2014 and at Chilton by 31 March 2015. The United Kingdom adds, in its rejoinder, that samples taken show that the installations in those agglomerations have complied with the requirements of Directive 91/271 in the field, in the case of the Durham (Barkers Haugh) agglomeration since January 2015, the Chester-le-Street agglomeration since November 2014 and the Chilton agglomeration since May 2015.
- 75 The United Kingdom contends, in addition, that the situation in the Islip agglomeration complied with the requirements of Directive 91/271 as at 11 September 2014. The United Kingdom submits, in its defence, the results of seven samples showing, in its view, compliance with the parameters laid down by that directive and, to that end, includes further samples in annex to its rejoinder. In that regard, the United Kingdom contends that the Commission wrongly conflates a Member State's obligation to ensure compliance with Articles 4 and 5 of, and Section B of Annex I to, Directive 91/271 with the separate obligation to monitor discharges in order to verify compliance under Article 15 of, and Section D of Annex I to, that directive. The United Kingdom also disputes the Commission's reading of the judgment of 15 October 2015, *Commission v Greece* (C-167/14, not published, EU:C:2015:684).

76 As regards the Witham and Chelmsford agglomerations, the United Kingdom relies on a mapping error in the boundary of the Rivers Can, Wid and Chelmer Sensitive Area, and contends that those two agglomerations never discharged into sensitive waters, so that more stringent treatment was not required. In its rejoinder, the United Kingdom states that that error was formally corrected with effect from 29 January 2016.

Findings of the Court

77 First of all, the Court points out that it is common ground that the eight agglomerations concerned by the third complaint have a p.e. of more than 10 000.

78 In accordance with Article 5(2) and (3) of Directive 91/271, for agglomerations of more than 10 000 p.e., apart from exceptions which are not applicable to the present case, first, urban waste water entering collecting systems must, before discharge into sensitive areas, be subject to more stringent treatment than that described in Article 4 of that directive and, secondly, those discharges must satisfy the relevant requirements of Section B of Annex I to that directive.

79 As regards Section D of Annex I to Directive 91/271, which in the context of its third complaint also the Commission alleges has been infringed, it should be recalled, as is apparent from paragraph 62 above, that the requirements set out in that provision are linked to the monitoring obligation referred to in Article 15 of that directive. Since the Commission does not ask the Court, in the context of its third complaint, to find that Article 15 has been infringed, the third complaint must be rejected in so far as it refers to Section D of Annex I to Directive 91/271.

80 As regards the Durham (Barkers Haugh), Chester-le-Street, Chilton, Tiverton and Broughton Astley agglomerations, the United Kingdom acknowledges that the situation of those agglomerations did not satisfy the requirements of Article 5 of, and Section B of Annex I to, Directive 91/271, when the period specified in the reasoned opinion expired. It is indeed apparent from the letter in reply to the reasoned opinion, dated 11 September 2014, that works were needed in those five agglomerations to install tertiary treatment in order to comply with the provisions of Directive 91/271.

81 By contrast, the United Kingdom denies infringement as regards the Islip, Witham and Chelmsford agglomerations.

82 First, the United Kingdom contends that improvement works at Islip were completed on 31 March 2014, and that that agglomeration complied with Directive 91/271 on 11 September 2014.

83 As regards the bringing of the Islip agglomeration's installations into compliance with the requirements of Directive 91/271, it is apparent from the documents before the Court, in particular from Annex B.10 to the United Kingdom's defence, that the oldest sample referred to in order to prove such compliance dates from

14 April 2015. It must, therefore, be found that it is not established that the treatment of the Islip agglomeration's waste water complied with the requirements of Directive 91/271 as at 11 September 2014.

84 Secondly, as regards the Witham and Chelmsford agglomerations, the United Kingdom has referred, since the pre-litigation stage, to a mapping error in the boundary of the Rivers Can, Wid and Chelmer Sensitive Area, into which the discharges from those agglomerations flow. The United Kingdom contends, therefore, that those agglomerations should never have been subject to the obligations of Article 5 of Directive 91/271.

85 The United Kingdom does not, however, deny that the territory of the Rivers Can, Wid and Chelmer was designated a sensitive area by it on 30 July 1998, and that that designation was revised only on 29 January 2016. In addition, the evidence submitted to the Court shows unequivocally that, on 11 September 2014, that territory formed part of the areas designated as sensitive by the United Kingdom and that the urban waste waters of the Witham and Chelmsford agglomerations flowing into that sensitive area were not the subject of the treatment required under Article 5 of Directive 91/271. The infringement, in so far as it relates to the United Kingdom's obligations under Article 5 of, and Section B of Annex I to, Directive 91/271, is, therefore, established.

86 In those circumstances, it must be found that by not ensuring that urban waste water entering collecting systems from the Tiverton, Durham (Barkers Haugh), Chester-le-Street, Islip, Broughton Astley, Chilton, Witham and Chelmsford agglomerations, before discharge into sensitive areas, be subject to more stringent treatment than that described in Article 4 of Directive 91/271, the United Kingdom has failed to fulfil its obligations under Article 5 of, and Section B of Annex I to, that directive. The third complaint must be rejected as to the remainder.

87 It follows from all the foregoing considerations that:

- by not ensuring that the waters collected in a combined urban waste waters and rainwater system in the Gowerton and Llanelli agglomerations are retained and conducted for treatment, in compliance with the requirements of Directive 91/271, the United Kingdom has failed to fulfil its obligations under Articles 3, 4 and 10 of, and Sections A and B of Annex I to, that directive;
- by not putting in place secondary treatment for the urban waste water in the Ballycastle agglomeration and by not subjecting the urban waste water in the Gibraltar agglomeration to any treatment, the United Kingdom has failed to fulfil its obligations under Article 4 of, and Section B of Annex I to, Directive 91/271; and
- by not ensuring that urban waste water entering collecting systems from the Tiverton, Durham (Barkers Haugh), Chester-le-Street, Islip, Broughton Astley, Chilton, Witham and Chelmsford agglomerations, before discharge into

sensitive areas, be subject to more stringent treatment than that described in Article 4 of Directive 91/271, the United Kingdom has failed to fulfil its obligations under Article 5 of, and Section B of Annex I to, that directive.

88 The action must be dismissed as to the remainder.

Costs

89 Under Article 138(1) of the Rules of Procedure, 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 the United Kingdom's failure to fulfil its obligations has in substance been established, the United Kingdom must be ordered to pay the costs.

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

1. **Declares that, by not ensuring that the waters collected in a combined urban waste waters and rainwater system in the Gowerton and Llanelli agglomerations are retained and conducted for treatment, in compliance with the requirements of Council Directive 91/271/EEC of 21 May 1991 concerning urban waste-water treatment, the United Kingdom of Great Britain and Northern Ireland has failed to fulfil its obligations under Articles 3, 4 and 10 of, and Sections A and B of Annex I to, that directive;**
2. **Declares that, by not putting in place secondary treatment for the urban waste water in the Ballycastle agglomeration and by not subjecting the urban waste water in the Gibraltar agglomeration to any treatment, the United Kingdom of Great Britain and Northern Ireland has failed to fulfil its obligations under Article 4 of, and Section B of Annex I to, Directive 91/271;**
3. **Declares that, by not ensuring that urban waste water entering collecting systems from the Tiverton, Durham (Barkers Haugh), Chester-le-Street, Islip, Broughton Astley, Chilton, Witham and Chelmsford agglomerations, before discharge into sensitive areas, be subject to more stringent treatment than that described in Article 4 of Directive 91/271, the United Kingdom of Great Britain and Northern Ireland has failed to fulfil its obligations under Article 5 of, and Section B of Annex I to, that directive;**
4. **Dismisses the action as to the remainder;**

5. Orders the United Kingdom of Great Britain and Northern Ireland to pay the costs.

Juhász

Vajda

Lycourgos

Delivered in open court in Luxembourg on 4 May 2017.

A. Calot Escobar

E. Juhász

Registrar

President of the Ninth Chamber