Clare County Council

Application for waste water discharge licence for Clonroadmore treatment plant

In accordance with Waste Water Discharge (Authorisation) Regulations, S.I. 684 of 2007

Section A: Non- technical summary

1. Introduction

Clare County Council is required to make an application to the Environmental Protection Agency (E.P.A) for a licence to discharge treated wastewater from the wastewater treatment plant at Clonroadmore, serving the Ennis town agglomeration, in accordance with Article 5 of the *Wastewater Discharge (Authorisation) Regulations 2007, (S.I No 684 of 2007)*, on or before 14th December 2007. The E. P. A. prepared a standard application form and guidance notes for the completion of this form. The contents of this application follow the format provided by the E.P.A. with the necessary attachments to indicate the quantity and quality of wastewater discharges from the Ennis town agglomeration, and to provide details of the impacts associated with the town's discharges on the receiving waters of the River Fergus. The application was prepared for Clare County Council by Burke Environmental Services.

2. Description of Clonroadmore WWTP catchment

Ennis is the county town of Clare, located on the N18, some 24 miles north of Limerick City and 40 miles south of Galway City. The town is mainly concentrated in an area of low ground, generally below 10mOD, in the lower catchment of the River Fergus, within the tidally affected reaches of the river. Ennis town has experienced steady growth during recent years, with the level of housing development in line with national trends, and due to its proximity to Shannon, Limerick and Galway. The Claureen/Inch River is tributary of the Fergus and joins the Fergus on the Western side of the town. Upstream of this confluence, the Fergus River branches into two parts. The major branch flows through the town centre. The minor branch flows in an easterly direction, rejoining the main river just downstream of the Clonroad bridge.

The topography of the town has shaped the development of the sewerage system into four sub-catchments, namely Tulla Road, Francis Street, Clareabbey and Clarecastle, with each sub-catchment draining to a main pumping station. (See Map 1, Attachment A1). Foul flows from the Tulla Road and Francis Street pumping stations are directed to the Clonroadmore WWTP, via rising mains. Clare Marts discharge approximately 14m^3/day of effluent on two/three days per week.

The total existing resident population of the town is approximately 23,500, but it should be noted that numerous older houses in the town are not connected to the foul sewer network. The town is well served by schools, commercial premises, retail outlets, hospitals and small and medium sized industrial enterprises.

3. Description of wastewater treatment works

Clonroadmore wastewater treatment plant (WWTP) provides treatment for the bulk of foul effluent arising in Ennis town. The WWTP is located between the railway line and the River Fergus, with the access road to the plant off the Quin Road and sharing this access with Clare Marts. The original plant on the site was constructed in the early 1970s and expanded over the years to the present treatment capacity of 17,000-population equivalent. (See aerial photograph of the location of the plant, and associated outfall locations, Attachments A2 and A3)

The Clonroadmore plant receives wastewater from two pumping stations, namely the Francis Street pumping station and the Tulla Road pumping station. These stations service two large sub-catchment, which will be referred to hereafter as the Francis Street sub-catchment and Tulla Road sub-catchment (see Attachment B1, for map indicating total area served). Both

pumping stations were fitted with grit/rag removal at their inception, but the equipment is currently being upgraded with conditioning screening units- details of this upgrade will be provided under proposed upgrades in Section 6 of this report.

The WWTP uses an extended aeration activated sludge treatment process. The inlet pipes from Francis Street and Tulla Road pumping stations and Clare Marts feed to a single distribution chamber. Two treatment channels carry wastewater from this area to the aeration stage in the treatment. Each channel is fitted with two adjustable penstocks to control the flow through the treatment works, and the surplus flow to the storm overflow tanks. A venturi flow measurement flume is located on each inflowing treatment channel.

The aeration tanks, each of 2530m^3 volume, are fitted with surface aerators, centrally located in each tank. Effluent from the aeration tanks feeds to the final settlement tanks. The settlement tanks constructed on the site in the 1970s consist of rectangular concrete tanks (each 6.1m side length), with sludge collection hoppers. There are no scrapers in these tanks. The settlement tank provided in the 1980s is a circular tank, of 18m internal diameter. The side wall has a graded slope, with a central sludge collection hopper. This tank is fitted with a scraper for sludge removal.

The effluent from the final settlement tanks is directed by gravity outfall to the River Fergus, which is located due East of the treatment works. A site lay-out map is provided as Attachment B2 and a map indicating the main discharge points to surface water is provided as Attachment B3. The treated wastewater discharge is the primary discharge, and is designated SW1 on the maps accompanying the application.

The distribution channel at the inlet to the WWTP is also connected to two flat-bottomed, storm tanks, with internal diameter of 22.8m x 11.45m. The

tanks provide primary settlement treatment only. Overflow from these units is directed to the River Fergus, with the outfall pipe located approximately 80 metres upstream of the treated wastewater outfall pipe. Given the nature of a combined sewer system, the inflow volumes vary significantly with weather. The overflow pipe discharge is designated as SW2 in the maps accompanying this application. As the treated wastewater discharge pipe from the WWTP is located within 80 metres of the storm tank overflow pipe, the impact of the discharge from the treatment plant is assessed on the basis of the combined loading to waters at this location.

Waste sludge is directed from the central hopper in the settlement tanks to the sludge holding tank. The sludge de-watering building houses a single belt thickener for sludge dewatering and polyelectrolyte tanks. This thickener achieves 18% dry solids in the final product. Sludge is removed off site to Cremins Farm Compost Ltd., Coolaleen, Broadford, Charleville, Co Limerick (Waste Permit Number WPLK 23A). A temporary thermal drying plant was operated on the site in the past, but this unit is no longer in use.

Control of the extended aeration treatment process is important to maintain dissolved oxygen levels in the aeration tanks, regulate the amount of activated sludge in the process (by controlling the amount of return activated sludge), and controlling the amount of activated sludge wasted from the process. In-process monitoring and final effluent monitoring is undertaken on twice monthly basis at the plant, to provide appropriate control of the facility performance. The WWTP is manned by two full time operatives and an environmental technician on a full time basis (Monday to Friday) and a part-time basis at the weekends.

4. Wastewater sources

The domestic, commercial and industrial sources of wastewater were surveyed in 1997, during a water audit survey. The details of this survey are provided as Attachment A4. However, there has been significant additional residential development in the town since this survey. Flow rates and wastewater characteristics vary on a day to day basis (based on varying activities e.g. Clare Marts on Tuesday and Thursday) and on a seasonal basis due to the combined nature of the sewer in the older areas of the collection system. The 1997 survey was cross checked to identify any facility liable to generate substances listed in Annex X of the Water Framework Directive (2000/60/EC) or relevant pollutants listed in Annex VIII of the Water Framework Directive. Monitoring for these substances was undertaken on November 28th 2007, and results on this monitoring will be submitted on their receipt.

The total hydraulic load arriving at the Clonroadmore WWTP was calculated by measurement of dry weather flow on a number of days in November 2007, and this measurement was used to estimate the final population equivalent, based on the average influent BOD values for the period January - October 2007. The estimated flow value arriving at the treatment works is 11,232 litres per day, with an average BOD of 134.5mg O_2/litre. The population equivalent for this loading is 25,189. This approach to estimation of population equivalent is in accordance with the definition provided in the Waste Water Discharge (Authorisation) Regulations, 2007 ("population equivalent" is a measurement of organic biodegradable load and a population equivalent of 1 (1 p.e.) means the organic biodegradable load having a five-day biochemical oxygen demand (BOD5) of 60g of oxygen per day; the load being calculated on the basis of the maximum average weekly load entering the waste water works during the year, excluding unusual situations such as those due to heavy rain).

Combined storm overflows

The two main pumping stations serving the Francis Street and Tulla Road sub-catchments appear to be designed to provide for 3DWF, with no storm water storage capacity. Surveys on the flow volumes in both sub-catchments were undertaken for the Ennis Main Drainage and Flooding Study in 2002. An additional study of live planning applications was also undertaken to provide projected loadings. This projected loading study is used for this application to indicate the likely dry weather flow volumes handled by both pumping stations. Copies of this study is appended in Attachment C2, indicating the dry weather flow and projected development dry weather flow for both pumping stations. A revised study of the catchments has not been undertaken for this application.

On the basis of the studies undertaken the estimated dry weather flow at Francis Street station is likely to be of the order of 60.6 litres per second. With a 3DWF design of 182 litres per second, this suggests that the station is operating at the design capacity. Signficant rainfall events will give rise to storm overflows.

equates to5,270m3/d. On what basis is the capacity calculated?

On the basis of studies undertaken the estimated dry weather flow at Tulla Road station is likely to be of the order of 31.5 litres per second. There is no storm water storage capacity at the pumping station and significant rainfall events will give rise to storm overflows. The design capacity of this station appears to be based on 180 litres/sec, which appears to indicate that the system is currently operating within the 6DWF capacity (even though the design was probably based on 3DWF). On this basis the storm overflow for the Tulla Road station is indicated as a storm overflow, rather than a secondary discharge point in the application.

Figures don't add up. Francis St. = 5,270m3/d and Tulla Rd =2,721 m3/d. Stated loading at 11,232m3/d. only these two pump stations supply the plant. There is 3,242m3/d missing.

5. Impact of emissions from the Clonroadmore WWTP on River Fergus

The impact of discharges from the Clonroadmore WWTP on the receiving waters of the River Fergus is considered under a number of headings:

5.1 Description of receiving waters
5.2 Estimation of dilution/assimilative capacity of the receiving waters
5.3 Total maximum nutrient load discharging to receiving waters
5.4 Monitoring undertaken on receiving waters
5.5 Statutory designations of receiving waters
5.6 Impact of combined storm overflows to River Fergus

5.1 Description of receiving waters

The Fergus is one of the main tributaries of the River Shannon, and is included in the catchment of the Shannon River Basin . The Fergus River rises to the northwest of Corofin village. The river is 59 kilometres long and has a catchment area of 1043 km^2. The upper reaches of the catchment are primarily well draining agricultural lands. The Clonroadmore WWTP discharge takes place approximately 500 metres upstream of Doora Bridge. Flow in the lower catchment of the Fergus River, in the vicinity of the WWTP discharge is controlled by a tidal barrage, located just upstream of Clarecastle Bridge. The barrage was installed in 1954 to control flooding above Clarecastle. The barrage consists of a number of sluice gates, which open and close with outgoing and incoming tides.

5.2 Assimilative capacity of receiving waters

An Foras Forbartha between 1972 and 1977 undertook flow monitoring of the River Fergus in the Ennis town catchment (see Attachment A5. Mean flow values for each month, in m^3/sec, is provided in Table 1.

Table 1: River Fergus Flow Data (An Foras Forbartha 1972-77) in m³/sec

Oct	Nov	Dec	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sept
12.02	19.06	24.81	25.83	23.12	11.83	7.58	5.62	1.42	2.07	3.88	10.93

Estimates of total effluent discharge volumes and associated nutrient loads are used to assess the likely impact of the discharge from the Clonroadmore WWTP on the river water quality in the Fergus.

Based on the low flow rates provided in Table 1 above (June 1.42 m^3/day) and the maximum discharge volume recorded (to date) at the waste water treatment plant, (11,232 m^3/day), a 10 fold dilution of the discharge is likely to be provided in the receiving waters at lowest flow volumes.

5.3 *Total maximum nutrient load discharging to River Fergus*

Analytical data for the wastewater discharge from the Clonroadmore WWTP is available on a bi-monthly basis for several years, up to an including August 2007. The influent and effluent streams are monitored in the laboratory on the site of the treatment plant for biochemical oxygen demand (BOD), chemical oxygen demand (COD), and suspended solids (SS). Monitoring for total nitrogen (TN) and total phosphorus (TP) is undertaken on a once per month basis, with analysis undertaken at an external laboratory (City Analysts, Limerick). Results up to August 2007 are used for this application.

The volume of *treated* wastewater discharged from the WWTP is recorded daily at the WWTP. No flow monitoring is routinely undertaken on the influent volumes, so that the volume of wastewater discharged from the primary settlement tanks (storm tanks) was estimated. This was undertaken by directing all the influent flow through the treatment channels for 30-minute periods over a number of consecutive dry days. The daily flow records for treated flow at the plant do not indicate significant diurnal variation in flow volumes. The *estimated* total flow, based on the dry weather influent volumes recorded on a number of dates in November 2007 is 11,232

m^3/day. As the outfall of treated wastewater from the Clonroadmore plant is located approximately 80 metres downstream of the storm overflow from the plant, the combined loadings of the treated and overflow waste streams is used to assess the impact of the discharge on the receiving waters for biochemical oxygen demand (BOD) chemical oxygen demand (COD), suspended solids (SS) total nitrogen (TN) and total phosphorus (TP), to waters. The nutrient discharge load is synopsised in Table 2, based on estimated flow readings and mean analytical values for the dates presented.

Table 2: Estimated nutrient load from Clonroadmore WWTP to Fergus River

Date	Treated flow (m^3/day)	Storm overflow (m^3/day)	BOD Kgs/ day	COD Kgs/ day	SS Kgs/ day	TN Kgs/ day	TP Kgs/ day
22/02/07	3485	7747	682.3	1351.1	792.5	169.6	22.5
18/04/07	4045	7187	1168.7	2744.3	1920.9	298.7	24.7
14/08/07	2898	8334	599.4	2382.2	1031.2	329.5	54.4

5.4 *Monitoring undertaken on receiving waters*

Clare County Council undertakes monitoring of the River Fergus under a number of statutory codes, as set out hereunder:

a) Monitoring in accordance with the *European Communities (Quality of Salmonid Waters) Regulations, S.I. 293 of 1988-* as the Fergus River is designated water under this statute. Results of monitoring at Clonroad Bridge (upstream of the WWTP discharge) and Doora Bridge (downstream of the WWTP discharge) for 2007 are set out in Table 3. All results are expressed in milligrams per litre, unless otherwise indicated. Abbreviations used refer to biochemical oxygen demand (BOD), dissolved oxygen (DO), nitrate (NO_3-N), nitrite (NO_2-N)d molybdate reactive phosphate (MRP) and ammonium (NH_4-N).

Table 3: River Fergus Monitoring (Salmonid Water Regulations)

Date	Station	BOD	DO % sat	NO_3-N	NO_2-N	MRP	NH_4-N
17/01/07	Clonroad	<3	109	1.33	<0.013	0.026	<0.007
	Doora	<3	100	1.19	0.015	0.033	<0.007
14/02/07	Clonroad	<2	121	0.93	<0.013	0.013	0.015
	Doora	<2	118	1.02	0.02	<0.01	0.549
14/03/07	Clonroad	No result	127	0.83	<0.013	<0.009	0.054
	Doora	No result	130	0.88	<0.013	<0.009	0.117
11/04/07	Clonroad	<2	128	0.58	<0.013	<0.019	0.036
	Doora	2	108	0.9	0.014	<0.019	0.166
16/05/07	Clonroad	<2	115	0.35	0.015	0.068	0.024
	Doora	2	100	0.53	0.022	0.066	0.301
12/06/07	Clonroad	1.2	131	0.186	0.006	0.006	0.012
	Doora	2.4	57	0.231	0.023	0.078	0.35
10/07/07	Clonroad	No result	99	0.251	0.006	0.012	0.006
	Doora	No result	89	0.318	0.008	0.03	0.131
Limit values	S.I 293 of 1988	<5	50% ≥ 9 mg/litre	Not defined	<0.05	Not defined	<0.82

The results indicate no breach in the standards prescribed under the Salmonid Regulations in 2007. There is a slight increase in the concentration of ammonium (NH_4-N) and molybdate reactive phosphate (MRP) in the waters, at Doora Bridge, downstream of the discharge from the Clonroadmore WWTP. This bridge is also downstream of the site of the dis-used (unlined) landfill at Doora. The potential contribution from the dis-used landfill is discussed in Section 5.4 (b) hereunder. Ammonium in water can be associated with the breakdown of discharges from sewage treatment works, stormwater overflows, agricultural run off or landfill discharges. Taking account of the high volume of wastewater discharges from the stormwater tanks at the treatment plant, and the volumes of agricultural effluent arriving at the plant on (at least) three days per week, some elevation in ammonium levels in the receiving waters is to be expected. While the increase is evident

in the receiving waters, there is no breach in a standard set under the European Communities (Quality of Salmonid Waters) Regulations. Quality standards for surface waters are likely to be updated in the near future, to provide for compliance with the Water Framework Directive, (2000/60/EC, implemented in Ireland by the Water Policy Regulations, S.I. 722 of 2003). This will provide an integrated approach to the protection and improvement of the ecological status, ecological potential and chemical status of surface waters.

b) Monitoring in compliance with a waste licence, *(WL 031-1)* granted to the now dis-used landfill facility at Doora (downstream of the WWTP). The monitoring stations are located at Clonroad Bridge, upstream of WWTP discharge, approximately 50 metres downstream of WWTP discharge, but upstream of potential landfill discharge and at Doora Bridge, downstream of both the WWTP and landfill. Results of this monitoring are set out in Table 4. All results are expressed in milligrams per litre, unless otherwise stated.

The increase in the concentration of ammonium in the river water, downstream of the treatment plant discharge can be identified in these results. A low dissolved oxygen level was recorded on 6th July 2006, during warm weather. The sampling point downstream of the WWTP is located on the riverbank, with mud flats and vegetation, and the mid-river channel is unlikely to experience the low level of dissolved oxygen indicated in this sample. Concentrations of dissolved oxygen in water decrease as the temperature increases. During warm dry weather, the risk of pollution of waters is greatest, with oxygen depletion taking place when a pollutant load enters the waters. Care must be taken during warm weather to reduce the discharge volume from the storm water tanks at the treatment plant, during low tide

Table 4: River Fergus Monitoring (Waste Licence WL031-1)

Date	Station	BOD	DO ppm	NH_4-N
04/07/07	Clonroad Bridge, upstream of WWTP	4.8	6.2	0.019
	River bank, downstream of WWTP, upstream of landfill	<2	6.2	<0.013
	Doora Bridge, downstream of WWTP + landfill	2.6	5.2	<0.013
07/02/07	Clonroad Bridge, upstream of WWTP	<2	8.1	0.015
	River bank, downstream of WWTP, upstream of landfill	2	7.4	0.52
06/09/06	Clonroad Bridge, upstream of WWTP	2.4	9.2	0.11
	River bank, downstream of WWTP, upstream of landfill	4	9.4	0.69
	Doora Bridge, downstream of WWTP + landfill	4.1	6.7	0.97
06/07/06	Clonroad Bridge, upstream of WWTP	<2	8.0	0.049
	River bank, downstream of WWTP, upstream of landfill (Water temperature during sampling 20.5°C)	<2	3.2	0.824
12/04/06	Clonroad Bridge, upstream of WWTP	<2	9.2	0.03
	River bank, downstream of WWTP, upstream of landfill	<2	8.2	0.19

c) Biological quality monitoring in accordance with the *Local Government (Water Pollution) Act 1977 Water Quality Standards for Phosphorous Regulations 1998* is undertaken on a national basis by the E.P.A. Clare County Council also commission Conservation Services to undertake more frequent biological monitoring of surface waters in the vicinity of the dis-used landfill, in accordance with WL 031-1. Results of all monitoring between 1988 and 2006 are set out in Table 5. The results are expressed as Q values or biotic indices for the quoted sites, with Q5 representing a pristine, unpolluted watercourse,

and Q1 representing a grossly polluted watercourse. The sampling method is based on kick sampling for macro-invertebrates. Biological sampling of the sites downstream of the Clonroadmore WWTP and at Doora Bridge were sampled by boat. The ratings assigned to these sites are described as "tentative", due to the sampling methodology, the occasional (twice-daily) saline nature of the waters and the mud substrate.

The quality ratings assigned to the River Fergus show no discernible difference in water quality at the monitoring stations upstream and downstream of the discharge from the treatment plant. There is evidence of deterioration in water quality in the River Fergus upstream of the Ennis town catchment in recent years (see Drehidnagower results in Table 5), and this trend (if not reversed) will limit the assimilative capacity of these waters.

Table 5: Biological monitoring on Fergus river stations.

Site name	Sampling undertaken in Summer of year indicated					
	1988	1991	1996	1998	2001	2006
Clonroad Bridge	4	4	3-4	3-4	3-4	3
Drehidnagower	4	4	4	4	4	3-4
Corrovorrin Bridge		3	3	2-3	3	3
Claureen Bridge	4	4	4	4	4	3
	Sampling undertaken in Summer of year indicated					
Year of testing	2002	2003	2004	2005	2006	2007
SW5[1]	3	3	3	3	3	3
Doora Bridge	3	3	3	3	3	3

Note 1: Site downstream of WWTP, upstream of landfill

d) The E.P.A has published monitoring data for the Shannon and Fergus estuaries, in the "Water Quality in Ireland 2001-2003" publication. Extracts referring to the Fergus estuary from this publication are provided in Attachment A6. Salinity values determine the acceptable levels of dissolved

inorganic nitrogen (sum of nitrate, nitrite and ammonium) and molybdate reactive phosphate (MRP) to prevent nutrient enrichment in partially saline waters. Using these limit values (calculation of limit values is provided in the EPA report), the lower Fergus River is compliant with limits for dissolved inorganic nitrogen and MRP, and is deemed unpolluted. Using these limit values for dissolved inorganic nitrogen and MRP, the Fergus Estuary is deemed intermediate status .

The monitoring programs described provide a good overview of the water quality status in the River Fergus, both upstream and downstream of the WWTP discharge. In conclusion, there is no indication of deterioration in biological quality status of the Fergus River downstream of the discharge from the treatment plant. There are already signs of enrichment in the river waters at Drehidnagower (Fergus River)) and Claureen (Claureen/Inch River) –both upstream of the town, which reduces the assimilative capacity of the river for any discharges from the urban area. There is a discernible increase in ammoniacal nitrogen in the river water downstream of the town catchment, which may be exacerbated during low flow periods. The impact of tidal flows reduces the overall impact of low flows in the river, in the vicinity of the wastewater treatment plant outfall.

5.5 *Statutory designations of River Fergus*

There is no downstream abstraction of water for potable supplies or for agricultural purposes. The river waters are brackish and unsuitable for abstraction at any point downstream of the discharge from the wastewater treatment plant. There are three other discharges downstream of the Clonroadmore WWTP discharge- Clareabbey and Clarecastle (both will be subject to separate applications for licensing under the *Wastewater Discharge (Authorisation) Regulations 2007, (S.I No 684 of 2007)* and Roche Ireland Ltd discharge. The discharge from the Roche plant is licensed by the

Environmental Protection Agency, Integrated Pollution Control Licence (Revised in 2001) - Licence Register No 547

The Fergus Estuary, downstream of the Clarecastle barrage forms part of the estuarine complex named "River Shannon and River Fergus Estuaries Special Protection Area, Site Code 004077", designated under *The European Communities (Conservation of Wild Birds) (Amendment) Regulations 1997.* The site is an important coastal wetland site for wintering waterfowl, with several significant populations of wild birds over wintering at the site (See Attachment A7).

The main channel of the River Fergus is designated "salmonid" water, under the *European Communities (Quality of Salmonid Waters) Regulations, S.I. 293 of 1988.* Breaches in limit values set in these regulations have not been identified in 2007. Details of previous breaches in limit values for nitrite (NO_2) are provided in the extract from the EPA publication "Water Quality in Ireland 2001-2003" (Attachment A6)

5.6 *Impact of combined storm overflows to River Fergus*

Two combined storm overflows are located in the Ennis town catchment, associated with the main pumping stations serving the Francis Street and Tulla Road sub-catchments. During prolonged wet weather, the configuration at these pumping stations is such that there is surcharging in the upstream sewer, resulting in the overflow of untreated combined storm and wastewater to the river. The discharges from the Francis Street Pumping Station have been the subject of complaint from adjacent residents. Details of these complaints are included in Attachment B11 of this application, together with hours of operation of the storm overflow pumps for the period January-August 2007. No overflow was observed between November 9th-28th 2007, during the preparation of this application.

Discharges from the Tulla Road pumping station also take place, but these discharges take place adjacent to the railway bridge and are not visible. No complaints have been recorded in relation to these discharges.

Monitoring of the Fergus River, downstream of the Francis Street pumping station, takes place at Clonroad Bridge. Details of physico-chemical and biological monitoring of this station, and comments on the results are included in Section 5.4 (b) above.

6. Proposed technology for preventing or reducing emissions from WWTP

The proposals for upgrading of the wastewater treatment facilities for the Ennis town catchment and the associated pumping stations, to cater for the existing and projected loading arising in the agglomeration are set out under the following headings:

6.1 Short-medium term measures to address infrastructural deficiencies

6.2 Long term measures to address infrastructural deficiencies

6.3 Short and long term measures to address pumping facilities

6.4 Consolidation of wastewater treatment works for Ennis and environs at new wastewater treatment facility

6.1 Short-medium term measures to address infrastructural deficiencies

The original wastewater treatment plant on the Clonroadmore site was constructed in the early 1970s and expanded over the years to the present treatment capacity of 17,000-population equivalent. The flow measurements presenting during the monitoring period (mid-November 2007) show daily discharge values of the order of 12,000 cubic metres, with an associated mean B.O.D loading of 134.5 mg/litre (based on 2007 influent load monitoring). Incidental monitoring of the receiving waters shows that the impact of the discharge is likely to be most significant during low flow periods in these waters, and at low tide levels. The discharge location is impacted by tidal

events, which limits the risk of significant pollution events. Taking account of the projected re-location of the treatment facility- (described under Section 6.2) - it is not considered that the existing facility would merit major investment. Short term, low cost measures could be taken to reduce the impact of the discharge and provide for reduction in the level of ammoniacal nitrogen and phosphate in the final discharge. These measures include

- Reduction of storm overflow volumes, by directing an increased loading through the secondary treatment unit. This requires careful management, to prevent sludge overflow. It is estimated that approximately 5000 cubic metres per day could be treated via the aeration system on the site, without detrimental impact arising in the system.
- Direction of flow through the secondary treatment system during hours of low flow levels in the river, coincident with low tides. This would reduce the risk period for the receiving waters, associated with the storm overflow discharge at these times. This would probably require the full flow through the WWTP for a period of 2 hours, at least once per day.
- Improved inlet flow control and screening

These short term measures will be required to meet the needs of the Ennis town development over a period of 5 years, pending the construction of a new treatment works.

6.2 *Long term measures to address existing infrastructural deficiencies*

Section 5 of this report dealt with the existing flows from the Clonroadmore WWTP, and the associated nutrient loading. The impact on the receiving waters was discussed in Section 5. The existing discharge volumes and associated nutrient loads present a limited risk of pollution to water quality in the Fergus River. Taking account of the projected increase in the population of the agglomeration, the typical cost of nutrient reduction in wastewater treatment plants, and the land footprint available for expansion of the

Clonroadmore plant- the proposal is to provide a new 50,000 capacity treatment works at the site of the existing Clareabbey waste water treatment plant. The site for the proposed treatment works has already been acquired by the Council. A brief to facilitate the appointment of consultants- proceeding to the full design stage- is currently being considered by the Department of Environment, Heritage and Local Government (DoEHLG). A preliminary report on the scheme was already approved by the DoEHLG. The time frame for full completion of the design is likely to be towards the end of 2008. This will require the approval of the Do EHLG and a further tendering process for appointment of contractors . A completion date for the upgraded works is likely to be in 2012.

The Fergus River upstream of the Clarecastle barrage will not provide adequate assimilative capacity for the treated effluent from a 50,000 capacity treatment plant. Studies have been undertaken on the Upper Fergus Estuary , downstream of the Clarecastle barrage. A 2D hydrodynamic model was constructed for the Hydro Environmental Ltd study "Fergus Estuary Water Quality Model Study- Outfall Site Selection" was assembled in 2002. This predictive model was used to assess a range of options for discharge of treated wastewater from the Ennis agglomeration. The model considered a B.O.D load from 50,000 population equivalent, (@ 25mg/litre) providing 281 kgs/day to the Fergus estuary, discharged via a diffuser arrangement. This load combined with the Roche Ireland Ltd load of 200 kgs/day would be within the assimilative capacity of the estuary, which is thought to be circa 500 kgs/day. It was further considered that the Fergus estuary would be able to assimilate the total nitrogen load from the 50,000-population equivalent (circa 115 kgs/day). Phosphorus loading was not considered in this exercise due to the tidal nature of the estuary.

6.2 *Short and long term measures to address pumping facilities*

The existing combined foul sewer network comprises four separate sub-catchments in the Ennis catchment, namely Franics Street, Tulla Road, Clareabbey and Clarecastle. Of these only Francis Street and Tulla Road are the subject of this application. Tulla Road and Francis Street pumping stations deliver wastewater to the Clonroadmore plant by rising main. These pumping stations were constructed in the early 1970s.

Francis Street Pumping Station: The pumping station accommodates foul and storm water from the Francis Street sub-catchment (see Attachment A1). A total of 7 pumps are installed in the station. Three pumps (two duty and one standby) deal with foul flows and four pumps (three duty and one standby) deal with storm flows. The foul pumps transfer wastewater to the Clonroadmore WWTP. The storm pumps only operate when the combined foul and storm loads entering the pumping station cannot be fully catered for by the foul pumps. Storm overflow is directed to the Fergus River. A mechanically raked screen protects the pumps at Francis Street pumping station. The grit trap originally installed is no longer functional. There is a high level emergency overflow located immediately upstream of the screen, and this overflows by gravity to the River Fergus. There is also a pumped overflow from the overflow chamber to the River Fergus. Flow monitoring was installed in late 2006 at the pumping station to monitor flows to the Clonroadmore WWTP. The pumping station is subject to daily inspection, recording of pump flows, and, general maintenance.

Records of hours of operation of storm overflow pumps for the period January –August 2007 are included in Attachment B11 to this application. Records of pumping hours for storm water pumps present a reasonable indication of the flow volumes discharged to the river during heavy storm flows. The storm pumping facility is only used to deal with significant storm

flow volumes, or during power outages to prevent flooding of the pumping station.

In the short term (early 2008), the pumping station will be equipped with new control panels and a conditioning screening unit. This screening removes and shreds rags in the system. The shredded rags will be pressed and landfilled, with eluate being returned to the wastewater collection system.

In the long term (together with the provision of the new treatment facility) Francis Street pumping station will be re-equipped and re-designed with the full upgrading of the sewer network. The sewer collection infrastructure will be upgraded to provide for increased sewer pipe sizes and separation of foul and storm flow in a number of areas. This will reduce surcharging on the pumping station and very significantly reduce the frequency of storm overflows at the station. The storm pumps will be of sufficient size to cater for a sufficiently large flood return period event without causing excess surcharging of the upstream system.

Tulla Road Pumping Station: This pumping station is located to the east of the town centre behind the Fergus Lawn Housing Estate. It was constructed in the mid 1970s and serves the northern area of Ennis receiving both combined and foul flows. A new conditioning screening unit is installed at the site. This removes and shreds rags in the system. The shredded rags are be pressed and landfilled, with eluate being returned to the wastewater collection system. The station is subject to daily inspection, record keeping and maintenance.

Stormwater storage is not provided at the pumping station and there are periodic overflows to the river. The storm overflow is located adjacent to the railway bridge, just downstream of Clonroad Bridge. The Fergus Minor joins the river below this point. Access to the river downstream of the discharge is

difficult, and no observation was made of discharges from this location during the preparation of the licence application.

The sewer network, the operation of the treatment plant and the assimilative capacity of the Fergus River were reviewed in 2000 during the *Ennis Main Drainage & Flooding Study*. The design flows for the upgraded sewer network are set out in the Ennis/Clarecastle Main Drainage Preliminary Report.

7. Measures planned to monitor emissions into the environment

Provisions for monitoring emissions from the wastewater treatment plant are in place at the Clonroadmore WWTP. A full time laboratory technician is employed at the treatment plant. Monitoring of influent and effluent waste water streams, and receiving waters is undertaken on a bi-monthly basis for the parameters biochemical oxygen demand (BOD), chemical oxygen demand (COD) and suspended solids (SS). Total nitrogen (TN) and total phosphorus (TP) measurements are undertaken on the influent and effluent streams on a monthly basis. Methods of analysis and sampling procedures are provided in Attachment E 2 of this application.

Sampling is currently undertaken as grab samples, but it is anticipated that composite samplers will be used on all influent and effluent streams in the near future.

DISCLAIMER PAGE

This licence D0048-01 was amended on 2nd December 2021 under Regulation 33 of the European Union (Waste Water Discharge) Regulations 2007 to 2020. The details of **Amendment D** must be read in conjunction with this licence. The amendment document is entitled **"Technical Amendment D"**

Environmental Protection Agency
An Ghníomhaireacht um Chaomhnú Comhshaoil

Headquarters
P.O. Box 3000
Johnstown Castle Estate
County Wexford
Ireland

This licence was amended on 19 December 2016, 29 June 2017 and 4 August 2020 under Regulation 33 of the Waste Water Discharge (Authorisation) Regulations 2007, as amended. The details of Amendment A, B and C must be read in conjunction with this licence. The amendment documents are entitled "Technical Amendment A", "Technical Amendment B" and "Technical Amendment C".

Environmental Protection Agency
An Ghníomhaireacht um Chaomhnú Comhshaoil

Headquarters
P.O. Box 3000
Johnstown Castle Estate
County Wexford
Ireland

WASTE WATER DISCHARGE LICENCE

Licence Register Number:	D0048-01
Licensee:	Clare County Council New Road Ennis County Clare
Agglomeration:	Ennis North

INTRODUCTION

This introduction is not part of the licence and does not purport to be a legal interpretation of the licence.

This licence relates to the Ennis North agglomeration. The design capacity of the wastewater treatment plant (WWTP) located at Clonroadmore was 17,000 population equivalent (p.e.). The organic load entering the WWTP at Clonroadmore is estimated at 27,650 p.e. at present. The plant has not been upgraded to facilitate this load, therefore, the plant is operating over its treatment capacity. The long term plan for urban waste water treatment in Ennis is to build a new plant with 50,000 p.e. An interim programme of improvements is in place to ensure the discharge does not cause environmental pollution.

The treatment plant is a two-stream activated sludge plant, without primary sedimentation.

The primary discharge from the WWTP discharges into the lower River Fergus. As the receiving water body would suggest, the discharge location is impacted by tidal influences. The primary discharge from Clonroadmore WWTP takes place approximately 500 metres upstream of Doora Bridge (EPA Hydrometric Station number 27060).

There is one secondary discharge point from the plant and two storm water overflows. The secondary discharge point is an open ended single pipe discharge to the River Fergus, approximately 80 metres upstream of the primary discharge from the Clonroadmore WWTP.

The stormwater overflows are located at the Tulla Road and Francis Street pumping stations. There are eight satellite pump-stations within the Tulla Road pump station catchment and three satellite pump-stations within the Francis Street pump station catchment. There are a total of nine emergency overflows in the system.

The licence requires appropriate remedial action, within specified timeframes, to be undertaken in order to address each of the discharge locations within the agglomeration. This remedial action will ensure that appropriate protection is afforded to the receiving water environment.

The licence sets out in detail the conditions under which Clare County Council will control and manage the waste water discharges from the agglomeration covered by this licence.

The legislation governing this licence relates specifically to, and is restricted to, the regulation and control of waste water discharges from the agglomeration. Therefore any odour or noise issue that may be associated with the waste water works including the treatment plant cannot be addressed by this licence.

Table of Contents

Page No.

Glossary of Terms

All terms in this licence should be interpreted in accordance with the definitions in the Waste Water Discharge (Authorisation) Regulations, 2007, unless otherwise defined in this section.

AER	Annual Environmental Report.
Agglomeration	An area where the population or economic activities or both are sufficiently concentrated for a waste water works to have been put in place.
Agreement	Agreement in writing.
Annually	At least one measurement in any one year.
Application	The application for this licence.
Attachment	Any reference to Attachments in this licence refers to attachments submitted as part of the licence application.
Biannually	All or part of a period of six consecutive months.
Biennially	Once every two years.
BOD	5 day Biochemical Oxygen Demand (without nitrification suppression).
CEN	Comité Européen De Normalisation – European Committee for Standardisation.
CBOD	5 day Carbonaceous Biochemical Oxygen Demand (with nitrification suppression).
COD	Chemical Oxygen Demand.
Combined approach	In relation to a waste water works, means the control of discharges and emissions to waters whereby the emission limits for the discharge are established on the basis of the stricter of either or both, the limits and controls required under the Urban Waste Water Regulations, and the limits determined under statute or Directive for the purpose of achieving the environmental objectives established for surface waters, groundwater or protected areas for the water body into which the discharge is made.
Daily	During all days when discharges are taking place; with at least one measurement per day.
Day	Any 24 hour period.
Discharge limits	Those limits, specified for a particular parameter in *Schedule A: Discharges* of this licence.
Discharge Point	The point from which a waste water discharge occurs.
DO	Dissolved oxygen.

Documentation	Any report, record, result, data, drawing, proposal, interpretation or other document, in written or electronic form, that is required by this licence.
Domestic Waste Water	Waste water from residential settlements and services that originates predominantly from human metabolism and from household activities.
Drawing	Any reference to a drawing or drawing number means a drawing or drawing number contained in the application, unless otherwise specified in this licence.
EMP	Environmental Management Programme.
Environmental damage	As defined in Directive 2004/35/EC.
EPA	Environmental Protection Agency.
Fortnightly	A minimum of 24 times per year, at approximately two week intervals.
GC/MS	Gas chromatography/mass spectroscopy.
ICP	Inductively coupled plasma spectroscopy.
Incident	The following shall constitute an incident for the purposes of this licence: (i) any discharge that does not comply with the requirements of this licence; (ii) any incident with the potential for environmental contamination of surface water or groundwater, or posing an environmental threat to land, or requiring an emergency response by the relevant Water Services Authority.
Industrial waste water	Any waste water that is discharged from premises used for carrying on any trade or industry or other non-domestic use and excludes run-off rain water.
Licensee	Clare County Council, New Road, Ennis, County Clare.
Licensing Regulations	Waste Water Discharge (Authorisation) Regulations 2007 (S.I. No. 684 of 2007).
Local Authority	Clare County Council.
Maintain	Keep in a fit state, including such regular inspection, servicing, calibration and repair as may be necessary to perform its function.
Mass flow limit	An emission limit value expressed as the maximum mass of a substance that can be emitted per unit time.
Mass flow threshold	A mass flow rate above which a concentration limit applies.
Monthly	A minimum of 12 times per year, at intervals of approximately one month.

National Environmental Complaints Procedure	As established under the National Environmental Enforcement Network.
Population Equivalent	A measurement of organic biodegradable load and a population equivalent of 1 (1 p.e.) means the organic biodegradable load having a five-day biochemical oxygen demand (BOD_5) of 60g of oxygen per day; the load being calculated on the basis of the maximum average weekly load entering the waste water works during the year, excluding unusual situations such as those due to heavy rain.
Primary Discharge	The discharge with the largest volume being discharged from the waste water works.
PRTR	Pollutant Release and Transfer Register.
Quarterly	All or part of a period of three consecutive months beginning on the first day of January, April, July or October.
Regional Fisheries Board	Shannon Regional Fisheries Board.
Sample(s)	Unless the context of this licence indicates to the contrary, the term samples shall include measurements taken by electronic instruments.
Secondary Discharge	A potential, occasional or continuous discharge from the waste water works other than a primary discharge or a storm water overflow.
SSRS	Small Stream Risk Score.
Specified discharges	Those discharges listed in *Schedule A: Discharges* of this licence.
Standard method	A National, European or internationally recognised procedure (e.g., I.S. EN, ISO, CEN, BS or equivalent); or an in-house documented procedure based on the above references; a procedure as detailed in the current edition of "Standard Methods for the Examination of Water and Wastewater" (prepared and published jointly by A.P.H.A., A.W.W.A. & W.E.F.), American Public Health Association, 1015 Fifteenth Street, N.W., Washington DC 20005, USA; or an alternative method as may be agreed by the Agency.
Storm water overflow	A structure or device on a sewerage system designed and constructed for the purpose of relieving the system of excess flows that arise as a result of rain water or melting snow in the sewered catchment, the excess flow being discharged to receiving waters.
The Agency	Environmental Protection Agency.
Waste Water	Domestic waste water or the mixture of domestic waste water with industrial waste water.
Waste Water	Sewers and their accessories (or any part thereof) and all associated

Works	structural devices, including waste water treatment plants, which are owned by, vested in, controlled or used by a water services authority for the collection, storage, treatment or discharge of waste water.
Water Services Authority	Clare County Council.
Weekly	During all weeks when discharges are taking place; with at least one measurement in any one week.
WSIP	Water Services Investment Programme.
WWTP	Waste water treatment plant.

Decision & Reasons for the Decision

The Environmental Protection Agency is satisfied, on the basis of the information available, that subject to compliance with the conditions of this licence, any discharges from the agglomeration served by the waste water works will comply with and will not contravene any of the requirements of Regulation 6 of the Waste Water Discharge (Authorisation) Regulations, 2007.

In reaching this decision the Environmental Protection Agency has had regard to the requirements and objectives of Regulation 6 of the Regulations and has considered the application and supporting documentation received from the applicant and the report of its inspector.

Part I Schedule of Discharges Licensed

In pursuance of the powers conferred on it by the Waste Water Discharge (Authorisation) Regulations, 2007, the Environmental Protection Agency (the Agency), under Regulation 28(1) of the said Regulations grants this Waste Water Discharge Licence to Clare County Council, New Road, Ennis, County Clare. The licence authorises the discharge of waste water from the waste water works servicing the Ennis North agglomeration described below, subject to conditions listed in Part II, with the reasons therefor and the associated schedules attached thereto.

Licensed Discharges, in accordance with the Second Schedule of the Waste Water Discharge (Authorisation) Regulations, 2007

Discharges from agglomerations with a population equivalent of more than 10,000

Part II Conditions

Condition 1. Scope

1.1 Statutory Obligations

1.1.1 This licence is for the purposes of Waste Water Discharge licensing under the Waste Water Discharge (Authorisation) Regulations, 2007, only and nothing in this licence shall be construed as negating the licensee's statutory obligations or requirements under any other enactments or regulations.

1.1.2 This licence shall be technically amended, as and when considered by the Agency, to ensure compliance with such environmental quality standard as may be prescribed for surface water classification of the receiving water body.

1.2 The agglomeration is the area outlined in red on "*Map B1 Showing Agglomeration Catchment served by wastewater treatment plant at Clonroadmore*" of the application. Any reference in this licence to agglomeration shall mean the area thus outlined in red.

1.3 The primary and secondary discharge to waters from the waste water works shall be restricted to those listed and described in *Schedule A: Discharges* of this licence, and shall be as set out in the licence application or as modified under Condition 1.6 of this licence and subject to the conditions of this licence.

1.4 The discharges to waters from the waste water works shall be controlled and managed and shall take place as set out in this licence. All programmes required to be carried out under the terms of this licence become part of this licence.

1.5 For the purposes of this licence, the locations of the waste water discharge(s) authorised by this licence is/are as presented on "*Map B3 Showing primary and secondary discharge point for Ennis agglomeration*" of the application.

1.6 No alteration to the waste water works or any part thereof that would, or is likely to, result in a material change to or increase in discharges sufficient to represent a risk of causing a breach of emission standards specified in the licence shall be carried out or commenced without prior notice to, and without the agreement of, the Agency.

1.7 Treatment Capacities

1.7.1 The licensee shall, on an annual basis, undertake an assessment of the remaining organic and hydraulic treatment capacities within the waste water works (design capacity of plant, less flow-load calculation for representative period).

1.7.2 The licensee shall maintain such available capacity within the waste water works as is necessary to ensure that there is no environmental risk posed to the receiving water environment as a result of the discharges.

1.7.3 Where the licensee determines, as part of those assessments undertaken in Condition 1.7.1 above, that the remaining treatment capacity will be exceeded within the ensuing three year period, the licensee shall notify the Agency and seek a licence review, as appropriate.

Reason: To clarify the scope of this licence.

Condition 2. Interpretation

2.1 Emission limit values for discharges to waters in this licence shall be interpreted in the following way:

2.1.1 Continuous Monitoring

(i) No pH value shall deviate from the specified range.

(ii) No temperature value shall exceed the limit value.

(iii) No other parameter that is continuously monitored shall exceed the limit value.

2.1.2 Composite Sampling

(i) No pH value shall deviate from the specified range.

(ii) For cBOD and COD, no more than the relevant number of samples specified in *Schedule B3: Interpretation of Discharge Monitoring Results* of this licence – Column 2 shall exceed the concentration Emission Limit Value based on the number of samples taken as listed in *Schedule B3: Interpretation of Discharge Monitoring Results* of this licence – Column 1. No individual result similarly calculated shall exceed the emission limit value by more than 100%.

(iii) For Suspended Solids, no more than the relevant number of samples specified in *Schedule B3: Interpretation of Discharge Monitoring Results* of this licence – Column 2 shall exceed the concentration Emission Limit Value based on the number of samples taken as listed in *Schedule B3: Interpretation of Discharge Monitoring Results* of this licence – Column 1. No individual result similarly calculated shall exceed the emission limit value by more than 150%.

(iv) For parameters other than pH, flow, cBOD, COD & Suspended Solids eight out of ten consecutive composite results shall not exceed the emission limit value. No individual result similarly calculated shall exceed the emission limit value by more than 20%.

(v) No mass emission limit values for parameters specified in *Schedule A: Discharge* of this licence shall be exceeded.

2.1.3 Discrete Sampling

For parameters other than pH and temperature, no grab sample value shall exceed the emission limit value by more than 150%.

Reason: To clarify the interpretation of limit values fixed under the licence.

Condition 3. Discharges

3.1 Where discharges from the waste water works are required to comply with Emission Limit Values by a date specified in *Schedule A: Discharges* of this licence, the Water Services Authority shall, prior to this date, take such measures as are necessary to ensure that environmental pollution is not caused as a result of the discharge.

3.2 No specified discharge from the waste water works shall exceed the emission limit values set out in *Schedule A: Discharges* of this licence, subject to the requirements of Condition 2 above.

3.3 The Water Services Authority shall take such measures as are necessary to ensure that no deterioration in the quality of the receiving waters shall occur as a result of the discharge.

3.4 Storm water overflows shall be as specified in *Schedule A.4: Storm Water Overflows* of this licence.

3.5 The licensee shall ensure that all or any of the following:

- Gross solids
- Litter

associated with discharges from the waste water works do not result in an impairment of, or an interference with, amenities or the environment.

Reason:	*To provide for the protection of the receiving environment by way of control and limitation of discharges to the River Fergus Estuary.*

Condition 4. Control and Monitoring

4.1 The licensee shall carry out such sampling, analyses, measurements, examinations, maintenance and calibrations as set out below and in accordance with *Schedule B: Monitoring* of this licence.

4.1.1 Analyses shall be undertaken by competent staff in accordance with documented operating procedures.

4.1.2 Such procedures shall be assessed for their suitability for the test matrix and performance characteristics shall be determined.

4.1.3 Such procedures shall be subject to a programme of Analytical Quality Control verified by a competent third party using control standards with evaluation of test responses.

4.1.4 Where any analysis is sub-contracted it shall be to a competent laboratory.

4.2 The licensee shall ensure that:

(i) Sampling and analysis for all parameters listed in the Schedules to this licence, and

(ii) Any reference measurement methods to calibrate automated measurement system shall be carried out in accordance with CEN standards. If CEN standards are not available, ISO, national or international standards that will ensure the provision of data of an equivalent scientific quality shall apply.

4.3 The licensee shall install on all emission points such sampling points or equipment, including any data-logging or other electronic communication equipment, as may be required by the Agency. All such equipment shall be consistent with the safe operation of all sampling and monitoring systems.

4.4 All automatic monitors and samplers shall be functioning at all times (except during maintenance and calibration) when the discharges are being made unless alternative sampling or monitoring has been agreed in writing by the Agency for a limited period. In the event of the malfunction of any continuous monitor, the licensee shall contact the Agency as soon as practicable and alternative sampling and monitoring facilities shall be put in place. Agreement for the use of alternative equipment, other than in emergency situations, shall be obtained from the Agency.

4.5 Monitoring and analysis equipment shall be operated and maintained as necessary so that monitoring accurately reflects the discharge (or ambient conditions where that is the monitoring objective).

4.6 The licensee shall clearly label and provide safe and permanent access to all on-site sampling and monitoring points and to off-site points as required by the Agency.

4.7 The licensee shall establish and maintain corrective action procedures and shall take corrective action should the specified requirements of this licence not be fulfilled. The responsibility and authority for persons initiating further investigation and corrective action in the event of a reported non-conformity with this licence shall be defined by the licensee.

4.8 The licensee shall establish and maintain a programme for maintenance and operation of all plant and equipment to ensure that no unauthorised waste water discharges take place. This programme shall be based on the instructions issued by the manufacturer/supplier or installer of the equipment. Appropriate record keeping and diagnostic testing shall support this maintenance programme. The licensee shall clearly allocate responsibility for the planning, management and execution of all aspects of this programme to appropriate personnel.

4.9 The location, frequency, methods and scope of monitoring, sampling and analyses, as set out in this licence, may be amended with the agreement of the Agency following evaluation of test results.

4.10 Dangerous Substances

4.10.1 A representative sample of effluent from the primary discharge point and each secondary discharge point shall be screened for the presence of organic compounds and metals within six months of the date of grant of this licence. The list of parameters for analysis shall include, as a minimum, those organic compounds and metals identified as relevant having regard to the Water Policy Regulations 2003 and amendments (S.I. No. 722 of 2003 and amendments) and any other relevant legislation. Such screening shall be repeated at intervals as requested by the Agency thereafter.

4.10.2 The licensee shall, within twelve months of the date of grant of this licence, investigate the sources of dangerous substances detected during the monitoring of the primary and secondary discharges and take such measures as are necessary to comply with the limits set in the Environmental Quality Objectives (Surface Water) Regulations, S.I. 272 of 2009) for the discharge of such substances from the waste water works. A report on the investigation and measures identified, including timeframe for implementation, shall be included in the AER.

4.11 Storm water overflows

4.11.1 The licensee shall, prior to the date for submission of the second AER (required under Condition 6.10), carry out an investigation for the identification and assessment of storm water overflows. A report on the storm water overflows shall be submitted to the Agency as part of the second AER. The assessment shall include a determination of compliance with the criteria for storm water overflows, as set out in the DoEHLG '*Procedures and Criteria in Relation to Storm Water Overflows*', 1995 and any other guidance as may be specified by the Agency.

4.11.2 The licensee shall carry out an assessment of storm water overflows at least once every three years thereafter and report to the Agency on each occasion as part of the AER. The assessment shall include a determination of compliance with the criteria for storm water overflows, as set out in the DoEHLG '*Procedures and Criteria in Relation to Storm Water Overflows*', 1995 and any other guidance as may be specified by the Agency. The licensee shall maintain a written record of all assessments and remedial measures arising from the assessment.

4.12 The licensee shall prepare a PRTR report for the primary and secondary discharges. The substances to be included in the PRTR shall be as agreed by the Agency each year by reference to EC Regulation No. 166/2006 concerning the establishment of the European Pollutant and Transfer Register and amending Council Directives 91/689/EEC and 96/61/EC. The PRTR shall be prepared in accordance with any relevant guidelines issued by the Agency and shall be submitted electronically in specified format and as part of the AER.

4.13 The licensee shall, within six months of the date of grant of this licence, develop and establish a Data Management System for collation, archiving, assessing and graphically presenting the monitoring data generated as a result of this licence.

4.14 The licensee shall carry out monthly monitoring of the influent stream to the waste water treatment plant for cBOD, COD, Suspended Solids, Total Nitrogen and Total Phosphorus in order to measure the mass loadings and removal efficiencies within the treatment plant.

4.15 Habitats

The licensee shall, within twelve months of the date of grant of this licence, undertake an ecological assessment of the predicted impacts of the discharges from the agglomeration. The assessment shall be submitted as part of the AER.

4.16 Prior to submitting ambient monitoring data, the licensee must consult with the Agency with regard to the appropriate format for submittal.

Reason:	*To provide for the protection of the environment by way of control and monitoring of discharges.*

Condition 5. Programmes of Improvements

5.1 The licensee shall, as a part of the second AER (required under Condition 6.10), prepare and submit to the Agency a programme of infrastructural improvements to maximise the effectiveness and efficiency of the waste water works in order to:

a) achieve improvements in the quality of all discharges from the works;

b) meet the emission limit values specified in *Schedule A: Discharges*, of this licence;

c) give effect to Regulation 2 of the Waste Water Discharge (Authorisation) Regulations 2007 (S.I. No. 684 of 2007).

d) reduce P loadings in the discharge to the maximum practicable extent;

e) meet the obligations of Condition 1.

f) reduce N loadings in the discharge to the maximum practical extent.

5.2 The programme of infrastructural improvements referred to in Condition 5.1 shall include an assessment of:

a) the waste water treatment plant, having regard to the effectiveness of the treatment provided by reference to the following:

(i) the existing level of treatment, capacity of treatment plant and associated equipment;

(ii) the emission limit values specified in *Schedule A: Discharges*, of this licence;

(iii) designations of the receiving water body;

(iv) downstream abstractions and uses of water;

(v) water quality objective for the receiving water body;

(vi) the standards and volumetric limitations applied to any industrial waste water that is licensed to discharge to the waste water works.

b) the integrity of the waste water works having regard to:

(i) capacity of the waste water works;

(ii) leaks from the waste water works;

(iii) misconnections between foul sewers and surface water drainage network;

(iv) infiltration by surface water;

(v) infiltration by groundwater;

(vi) such other aspects of the works as may be specified by the Agency.

c) each secondary discharge from the waste water works to evaluate options for the discontinuation of discharges or the provision of treatment to improve discharge quality. The assessment shall include a detailed quantification of the impact of the discharge on:

(i) designations of the receiving water body;

(ii) down stream abstractions and uses of water;

(iii) water quality objective for the receiving water body.

d) all storm water overflows associated with the waste water works to determine the effectiveness of their operation and in particular to identify improvements necessary to comply with the requirements of this licence.

5.3 The programme of infrastructural improvements shall include a plan for implementation for each individual improvement identified. The plan for implementation shall:

a) in the case of the assessment carried out under Conditions 5.2(a) (waste water treatment plant), 5.2(c) (secondary discharges) and 5.2(d) (storm water overflows):

(i) clearly identify and describe the improvement and the timeframe for implementation;

(ii) specify the parametric emission(s) that will be affected by the implementation of the improvement;

(iii) estimate the costs and sources of funding required to implement the improvement including, where appropriate, details of submissions made to the Department of the Environment, Heritage and Local Government and sanctions received;

(iv) identify the anticipated improvements in the quality of the receiving waters as a result of the implementation of the improvement.

b) in the case of the assessment carried out under Condition 5.2(b) (waste water works):

(i) identify, evaluate and describe the infrastructural works necessary to implement those works listed under *Schedule C: Specified Improvement Programme* of this licence;

(ii) clearly identify and describe the improvement and the timeframe for its implementation;

(iii) estimate the costs and sources of funding required to implement the improvement including, where appropriate, details of submissions made to the Department of the Environment, Heritage and Local Government and sanctions received.

5.4 The licensee shall complete the improvements as set out in *Schedule C: Specified Improvement Programme* of this licence by 31st December 2010 in order to ensure compliance with the emission limit values as set out in *Schedule A: Discharges* of this licence.

5.5 The licensee shall put in place a programme of measures for the gathering, recording and retention of information in relation to the infrastructural components of the waste water works. This information shall be in the form of 'As-Constructed' drawings and electronic mapping tools, or in any other format as required by the Agency.

5.6 Discharges from SW2 shall comply with the definition of Storm Water Overflows as defined in '*Procedures and Criteria in Relation to Storm Water Overflows*' published by the Department of the Environment, Heritage and Local Government (1995) by 1st January 2011 at the latest.

Reason:	*To provide for the improvement of the waste water works on a planned basis having regard to the need for ongoing assessment, recording and reporting of matters affecting the receiving water environment.*

Condition 6. Notifications, Records and Reports

6.1 The licensee, shall notify the Agency by both telephone and facsimile, to the Agency's headquarters in Wexford, or to such other Agency office as may be specified by the Agency, as soon as practicable after the occurrence of any incident (as defined in this licence). The licensee shall include as part of the notification, date and time of the incident, summary details of the occurrence, and where available, the steps taken to minimise any discharges.

6.2 In the case of any incident relating to a discharge to water, the licensee shall notify the Shannon Regional Fisheries Board and the relevant downstream water services authority, as soon as practicable after such an incident.

6.3 The licensee shall notify the Agency, as soon as is practicable, where a discharge from the waste water works has ceased permanently.

6.4 The licensee shall make a record of any incident. This record shall include details of the nature, extent, and impact of, and circumstances giving rise to, the incident. The record shall include all corrective actions taken to manage the incident, to minimise the effect on the environment, and to avoid recurrence. The licensee shall, as soon as practicable following incident notification, submit to the Agency the incident record including clean up and recurrence prevention measures.

6.5 The licensee shall record all complaints of an environmental nature related to the discharge(s) to waters from the waste water works in accordance with the national environmental complaints procedure. Each such record shall give details of the date and time of the complaint, the name of the complainant (if provided), and the nature of the complaint. A record shall also be kept of the response made in the case of each complaint.

6.6 The licensee shall record all sampling, analyses, measurements, examinations, calibrations and maintenance carried out in accordance with the requirements of this licence.

6.7 The licensee shall as a minimum keep the following documents at the headquarters of the licensee or such office as may be agreed by the Agency:

(i) the licence application and all associated documentation;

(ii) the licence(s) relating to the discharge(s) to waters from the waste water works;

(iii) the previous year's AER;

(iv) records of all sampling, analyses, measurements, examinations, calibrations and maintenance carried out in accordance with the requirements of this licence;

(v) relevant correspondence with the Agency;

(vi) up to date drawings/plans showing the location of key process and environmental infrastructure, including monitoring locations and discharge points;

(vii) up to date operational procedures for all monitoring and control equipment necessary to give effect to this licence.

This documentation shall be available to the Agency for inspection at all reasonable times.

6.8 The licensee shall establish and maintain a Public Awareness and Communications Programme to ensure that members of the public can obtain, at all reasonable times, environmental information relating to the discharge.

6.9 Unless otherwise agreed by the Agency, all reports and notifications submitted to the Agency shall:

(i) be sent to Administration, Office of Environmental Enforcement (OEE) at the Agency's Headquarters or to such other Agency office agreed by the Agency;

(ii) comprise one original and two copies unless additional copies are required by Agency;

(iii) be formatted in accordance with any written instruction or guidance issued by the Agency;

(iv) include whatever information may be required by the Agency;

(v) be identified by a unique code, indicate any modification or amendment, and be correctly dated to reflect any such modification or amendment;

(vi) be accompanied by a written interpretation setting out their significance in the case of all monitoring data; and

(vii) be transferred electronically to the Agency's computer system if required by the Agency.

6.10 The licensee shall submit to the Agency, by the 28th February of each year, an AER covering the previous calendar year. This report, which shall be to the satisfaction of the Agency, shall include as a minimum the information specified in *Schedule D: Annual Environmental Report* of this licence and shall be prepared in accordance with any relevant guidelines issued by the Agency.

6.11 All reports shall be certified accurate and representative by the Director of Services or a nominated, suitably qualified and experienced deputy.

6.12 The licensee shall, within six months of date of grant of this licence, ensure that a documented Emergency Response Procedure is in place, that addresses any emergency situation that may originate on-site. This procedure shall include provision for minimising the effects of any emergency on the environment. This procedure shall be reviewed annually and updated as necessary.

Reason:	*To provide for the collection and reporting of adequate information on the activity.*

Condition 7. Financial Charges and Provisions

7.1 Agency Charges

7.1.1 The licensee shall pay to the Agency an annual contribution of €7,118, or such sum, as the Agency from time to time determines, having regard to variations in the extent of reporting, auditing, inspection, sampling and analysis or other functions carried out by the Agency, towards the cost of monitoring the discharge as the Agency considers necessary for the performance of its functions under the Waste Water Discharge (Authorisation) Regulations 2007. The first payment shall be a pro-rata amount for the period from the date of this licence to the 31st day of December, and shall be paid to the Agency within one month from the date of the licence. In subsequent years the licensee shall pay to the Agency such revised annual contribution as the Agency shall from time to time consider necessary to enable performance by the Agency of its relevant functions under the Waste Water Discharge (Authorisation) Regulations 2007 and all such payments shall be made within one month of the date upon which demanded by the Agency.

7.1.2 In the event that the frequency or extent of monitoring, investigations or other functions carried out by the Agency needs to be increased, the licensee shall contribute such sums as determined by the Agency to defray its costs in regard to items not covered by the said annual contribution.

7.2 Environmental Liabilities

7.2.1 The licensee shall as part of the AER provide an annual statement as to the measures taken or adopted in relation to the prevention of environmental damage, and the financial provisions in place in relation to the underwriting of costs for remedial actions following anticipated events (including closure) or accidents/incidents, as may be associated with discharges or overflows from the waste water works.

7.2.2 The licensee shall arrange for the completion, by an independent and appropriately qualified consultant, of a comprehensive and fully costed Environmental Liabilities Risk Assessment (ELRA) to address the liabilities from present or planned discharges. A report on this assessment shall be submitted to the Agency for agreement within twelve months of the date of grant of this licence. The ELRA shall be reviewed as necessary to reflect any significant change to the volume or character of effluent discharged, and in any case every three years following initial agreement (the results of the review shall be notified as part of the AER).

7.2.3 As part of the measures identified in Condition 7.2.1 the licensee shall, to the satisfaction of the Agency, make financial provision to cover any liabilities identified in Condition 7.2.2. The amount of indemnity held shall be reviewed and revised as necessary, but at least triennially. Proof of renewal or revision of such financial indemnity shall be included in the annual 'Statement of Measures' report identified in Condition 7.2.1.

7.2.4 The licensee shall have regard to the Environmental Protection Agency Guidance on Environmental Liability Risk Assessment, Residuals

Management Plans and Financial Provision when implementing Conditions 7.2.1, 7.2.2 and 7.2.3 above.

Reason:	*To provide for adequate financing for monitoring and financial provisions for measures to protect the environment.*

SCHEDULE A: Discharges

A.1 Primary Waste Water Discharge

Primary Discharge Point Code: SW1

Name of Receiving Waters: River Fergus (SH_27_1122)

Location: E 134855, N 177389

Parameter	Emission Limit Value	
pH	7 - 9	
Temperature	25°C (max)	
	mg/l	
COD	125	
Suspended Solids	35	
Orthophosphate	1	
Total Nitrogen (as N)	15	
Total Phosphorous	2	
	mg/l Note 1	mg/l Note 2
cBOD	20	10
Ammonia (as N)	6	1

Note 1: The emission limit values shall apply until 31st December 2010.
Note 2: The emission limit values shall apply from 1st January 2011.

A.2 Secondary Waste Water Discharges

Discharges from SW2 shall comply with the specifications for a 'Storm Water Overflow' by 1st January 2011 in accordance with Condition 5.6 and *Schedule A.3 Secondary Discharges to be upgraded to Storm Water Overflows*, of this licence.

A.3. Secondary Discharges to be upgraded to Storm Water Overflows.

Discharge Point Code	Location	Name of Receiving Waters	Schedule for Upgrade
SW2	Overflow from storm water tanks located at the WWTP	River Fergus	Discharge shall revert to performance standards as required of a Storm Water Overflow by 1st January 2011 Note 1

Note 1: The licensee shall ensure that discharge from this emission point complies with the definition of a storm water overflow as defined in *'Procedures and Criteria in Relation to Storm Water Overflows'* as published by the Department of the Environment, Heritage and Local Government (1995)'.

A.4 Storm Water Overflows

Discharge Point Code	Location [Note 1]	Name of Receiving Waters
SW3	Storm overflow from Francis Street pumping station	River Fergus
SW4	Storm overflow from Tulla Road pumping station	River Fergus

Note 1: The licensee shall ensure that discharge from this emission point complies with the definition of a storm water overflow as defined in *'Procedures and Criteria in Relation to Storm Water Overflows'* as published by the Department of the Environment, Heritage and Local Government (1995)'.

SCHEDULE B: Monitoring

B.1 Monitoring of Primary Waste Water Discharge

Primary Discharge Point Code: SW1

Parameter	Monitoring Frequency	Analysis Method/Technique
Flow	Continuous Daily [Note 1]	On-line flow meter with recorder
Temperature	Daily	Temperature probe
pH	Daily	pH electrode/meter and recorder
Conductivity	Monthly	Conductivity Meter
Carbonaceous Biochemical Oxygen Demand	Monthly	Standard Method
Chemical Oxygen Demand	Monthly	Standard Method
Suspended Solids	Monthly	Standard Method
Total Nitrogen (as N)	Monthly	Standard Method
Dissolved Inorganic Nitrogen (DIN)	Monthly	Standard Method
Ammonia (as N)	Monthly	Standard Method
Total Phosphorus (as P)	Monthly	Standard Method
Orthophosphate (as P)	Monthly	Standard Method
Metals and Organic Compounds [Note 2]	As required	Standard Method
Visual Inspection	Daily	Sample and examine for colour and odour

Note 1: The licensee shall install a continuous flow meter and recorder within 3 months of the date of grant of this licence.
Note 2: Having identified the most relevant pollutants from screening (Condition 4.10.1), subsequent monitoring for these pollutants shall be carried out at a frequency agreed by the Agency.

B.3 Interpretation of Discharge Monitoring Results

No of samples taken in any one year [Note 1]	Maximum number of samples which may exceed ELV
4-7	1
8-16	2
17-28	3
29-40	4
41-53	5
54-67	6
68-81	7
82-95	8
96-110	9
111-125	10
126-140	11
141-155	12
156-171	13
172-187	14
188-203	15
204-219	16
220-235	17
236-251	18
252-268	19
269-284	20
285-300	21
301-317	22
318-334	23
335-350	24
351-365	25

Note 1: Where the licensee has taken samples which exceed the number specified in this Schedule, the licensee shall submit to the Agency all results of analysis.

B.4 Ambient Monitoring

Receiving Water Monitoring

Location:

aSW2u – E134892, N177632
aSW1d – E134844, N177308
aSW3u – E134355, N177744
aSW3d – E134530, N177892

Parameter	Monitoring Frequency [Note 1]	Analysis Method/Technique
pH	Ten samples/year	pH electrode/meter
DO	Ten samples/year	DO probe
BOD	Ten samples/year	Thermometer
Orthophosphate (as P)	Ten samples/year	Standard Method
Total Nitrogen (as N)	Ten samples/year	Standard Method
Total Phosphorous	Ten samples/year	Standard Method
Ammonia	Ten samples/year	Standard Method
Visual inspection	Weekly	Sample and examine for colour and odour

Note 1: Ambient monitoring to be submitted to the Agency in accordance with Condition 4.16 of this licence.

SCHEDULE C: Specified Improvement Programme

C.1 Improvement Programme for Primary Discharge

Specified Improvement	Completion Date
Clonroadmore WWTP ♦ Rehabilitation of the storm/balance tanks; ♦ Upgrade of the inlet works; ♦ Upgrade of the treatment capacity of the current aerator and clarifier tanks to cater for the existing and the short term increase in wastewater loading; ♦ Upgrade of the sludge handling facilities; ♦ Installation of tertiary treatment systems	31st December 2010
Collection System ♦ Upgrade of satellite pump station overflows; ♦ Separation of known surface water connections from the main combined sewer where feasible; ♦ Rehabilitation of sewers with high levels of infiltration.	31st December 2010
Tulla Road & Francis St Pump Stations ♦ Repair of grit traps; ♦ Replacement of pumps and improving the pump controls; ♦ Diversion of surface water flows away from pump stations; ♦ Upgrade of the combined sewer overflow regime at pump stations	31st December 2010
Any other works notified in writing by the Agency	As agreed

C.2 Improvement Programme for Secondary Discharge(s)

Specified Improvement	Completion Date
Any works notified in writing by the Agency	As agreed

C.3 Improvement Programme for Storm Water Overflows

Specified Improvement	Completion Date
Any works notified in writing by the Agency	As agreed

SCHEDULE D: Annual Environmental Report

Annual Environmental Report Content[Note 1]
Discharges from the agglomeration.
Summary report on monthly influent monitoring.
Report on Dangerous Substances in accordance with Condition 4.10.2.
Data collection and reporting requirements under the Urban Waste Water Treatment Directive.
Complaints summary.
Pollutant Release and Transfer Register - report for previous year.
Pollutant Release and Transfer Register - proposal for current year.
Ambient monitoring summary.
Storm water overflow identification and inspection report.
Reported incidents summary.
Report on progress made and proposals being developed to meet the improvement programme requirements. [Note 2]
Development/Infrastructural works summary (completed in previous year or prepared for current year).
Any other items specified by the Agency.

Note 1: Content may be revised subject to the agreement of the Agency.

Note 2: This summary report shall provide detail on all measures proposed and undertaken under the Water Services Investment Programme for the agglomeration, including progress reports on infrastructural works and a statement of compliance with timeframes set out in this licence.

Sealed by the seal of the Agency on this the 2nd day of September 2009.

PRESENT when the seal of the Agency was affixed hereto:

Ms Laura Burke Director/Authorised Person

JUDGMENT OF THE COURT (Tenth Chamber)

28 March 2019 (*)

Table of contents

(Failure of a Member State to fulfil obligations — Directive 91/271/EEC — Collection and treatment of urban waste water — Exceptional circumstances — Best technical knowledge not entailing excessive costs — Principle that the costs should be proportionate — Burden of proof — Means of proof)

In Case C-427/17,

ACTION under Article 258 TFEU for failure to fulfil obligations, brought on 14 July 2017,

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

applicant,

v

Ireland, represented by J. Quaney, M. Browne and A. Joyce, acting as Agents, and by S. Kingston, Barrister-at-Law, C. Toland, Senior Counsel, and B. Murray, Senior Counsel,

defendant,

THE COURT (Tenth Chamber),

composed of K. Lenaerts, President of the Court, acting as President of the Tenth Chamber, F. Biltgen and E. Levits (Rapporteur), Judges,

Advocate General: N. Wahl,

Registrar: L. Hewlett, Principal Administrator,

having regard to the written procedure and further to the hearing on 19 September 2018,

having decided, after hearing the Advocate General, to proceed to judgment without an Opinion,

gives the following

Judgment

1 By its application, the European Commission requests the Court to declare that:

– by not ensuring that the waters collected in a combined urban waste water and rainwater system in the agglomerations of Athlone, Ballincollig New, Cavan, Cork City, Enniscorthy, Fermoy, Midleton, Osberstown, Mallow, Ringaskiddy (including within it the agglomeration of Carrigaline), Roscommon Town, Roscrea, Thurles and Gaoth Dobhair 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), 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'), Ireland has failed to fulfil its obligations under Article 3(1) and (2) of that directive and section A and footnote 1 of Annex I thereto;

– 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 agglomerations of Arklow, Athlone, Ballincollig New, Ballybofey/Stranorlar, Cavan, Cobh, Cork City, Enfield, Enniscorthy, Fermoy, Killybegs, Mallow, Midleton, Passage/Monkstown, Osberstown, Rathcormac, Ringaskiddy (including the flows from Carrigaline and Crosshaven), Ringsend, Roscommon Town, Roscrea, Shannon Town, Thurles, Tubbercurry, Youghal and Gaoth Dobhair, Ireland has failed to fulfil its obligations under Article 4(1) and (3) of that directive, read in conjunction with the requirements of Article 10 thereof and section B of Annex I thereto;

– by not ensuring that urban waste water entering collecting systems from the agglomerations of Athlone, Ballincollig New, Cavan, Cork City, Dundalk, Enniscorthy, Fermoy, Killarney, Killybegs, Longford, Mallow, Midleton, Navan, Nenagh, Osberstown, Portarlington, Ringsend, Roscrea, Thurles, Tralee and Waterford City be, before discharge into sensitive areas, made subject to treatment more stringent than that described in Article 4 of Directive 91/271 and in accordance with the requirements of section B of Annex I thereto, Ireland has failed to fulfil its obligations under Article 5(2) and (3) of that directive, read in conjunction with the requirements of Article 10 thereof and section B of Annex I thereto; and

– by not ensuring that the disposal of waste water from urban waste water treatment plants of the agglomerations of Arklow and Castlebridge is subject to prior regulations and/or specific authorisation, Ireland has failed to fulfil its obligations under Article 12 of Directive 91/271.

I. Legal context

2 The third recital of Directive 91/271 states:

'... 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'.

3 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'.

4 Article 2 of Directive 91/271 states:

'For the purposes of this Directive:

...

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;

...

11. "eutrophication" means the enrichment of water by nutrients, especially compounds of nitrogen and/or phosphorus, causing an accelerated growth of algae and higher forms of plant life to produce an undesirable disturbance to the balance of organisms present in the water and to the quality of the water concerned;

...'

5 Article 3 of Directive 91/271 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 section A of Annex I. ...'

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 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. ...

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.'

7 Article 5 of Directive 91/271 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 section B of Annex I. ...

...

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.

...'

8 Article 10 of Directive 91/271 states:

'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.'

9 Article 12 of Directive 91/271 states:

'1. Treated waste water shall be reused whenever appropriate. Disposal routes shall minimise the adverse effects on the environment.

2. Competent authorities or appropriate bodies shall ensure that the disposal of waste water from urban waste water treatment plants is subject to prior regulations and/or specific authorisation.

3. Prior regulations and/or specific authorisation of discharges from urban waste water treatment plants made pursuant to paragraph 2 within agglomerations of 2 000 to 10 000 p.e. in the case of discharges to fresh waters and estuaries, and within agglomerations of 10 000 p.e. or more in respect of all discharges, shall contain conditions to satisfy the relevant requirements of section B of Annex I. The Commission may amend those requirements. Those measures, designed to amend non-essential elements of this Directive, shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 18(3).

4. Regulations and/or authorisation shall be reviewed and if necessary adapted at regular intervals.'

10 Annex I to Directive 91/271, entitled 'Requirements for urban waste water', provides in section A, headed '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.'

11 Section B — headed 'Discharge from urban waste water treatment plants to receiving waters' — of Annex I to Directive 91/271 states:

'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.

3. Discharges from urban waste water treatment plants to those sensitive areas which are subject to eutrophication as identified in Annex II.A(a) shall in addition meet the requirements shown in Table 2 of this Annex.

...'

12 Footnote 1 of Annex I, which relates to sections A and B of the annex, is worded as follows:

'Given that it is not possible in practice to construct collecting systems and treatment plants in a way such that all waste water can be treated during situations such as unusually heavy rainfall, Member States shall decide on measures to limit pollution from storm water overflows. Such measures could be based on dilution rates or capacity in relation to dry weather flow, or could specify a certain acceptable number of overflows per year.'

13 Table 1 of Annex I to Directive 91/271 contains the requirements for discharges from urban waste water treatment plants subject to Articles 4 and 5 of the directive. It is as follows:

Parameters	Concentration	Minimum percentage of reduction [in relation to the load of the influent]	Reference method of measurement
Biochemical oxygen demand (BOD5 at 20 °C) without nitrification ...	25 mg/l O^2	70-90 40 under Article 4(2)	...
Chemical oxygen demand (COD)	125 mg/l O^2	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 to 10 000 p.e.)	90 ... 90 under Article 4(2) (more than 10 000 p.e.) 70 under Article 4(2) (2 000 to 10 000 p.e.)	...

14 Table 2 of Annex I to Directive 91/271 contains the requirements for discharges from urban waste water treatment plants to sensitive areas which are subject to eutrophication. It is as follows:

Parameters	Concentration	Minimum percentage of reduction …	Reference method of measurement
Total phosphorus	2 mg/l (10 000 - 100 000 p.e.) 1 mg/l (more than 100 000 p.e.)	80	…
Total nitrogen …	15 mg/l (10 000 - 100 000 p.e.) … 10 mg/l (more than 100 000 p.e.) …	70-80	…

15 Section A of Annex II to Directive 91/271 specifies the criteria for identification of sensitive areas.

II. Pre-litigation procedure and proceedings before the Court

16 By a letter of formal notice of 27 September 2013, the Commission raised with Ireland its concerns relating to compliance with Directive 91/271, taking the view that Ireland:

- had failed to ensure that waters collected in 40 agglomerations were retained and conducted for treatment in compliance with the requirements of Article 3 of Directive 91/271 and section A of Annex I thereto;
- had not put in place secondary or equivalent treatment for urban waste water discharges from 52 agglomerations, as provided for in Article 4 of Directive 91/271 and sections B and D of Annex I thereto;
- had failed to apply Article 5 of Directive 91/271 correctly in respect of 28 agglomerations; and
- had failed to apply Article 12 of Directive 91/271 in respect of 32 agglomerations.

17 By letters of 11 December 2013, 14 February 2014 and 8 April 2014, Ireland acknowledged the shortcomings regarding the system for collecting and treating urban waste water and stated that the numerous upgrading works would, in the coming years, enable that system to comply fully with Directive 91/271.

18 In the light of that information and following a meeting between the Irish authorities and Commission staff on 9 April 2014, the Commission sent Ireland an additional letter of formal notice dated 25 September 2015, replacing the previous one in full.

19 In the additional letter of formal notice, the Commission limited the first and fourth complaints to 12 and 27 agglomerations respectively, while extending the second and third complaints to 53 and 36 agglomerations respectively.

20 In its replies of 25 January and 29 July 2016, Ireland set out the advances in the programme for upgrading its system for collecting and treating urban waste water, whilst acknowledging that works were necessary in order to comply fully with Directive 91/271.

21 On the basis of the data submitted by Ireland in its replies, the Commission sent it a reasoned opinion dated 30 September 2016, calling upon it to take the measures necessary to comply with the reasoned opinion within two months of receipt thereof.

22 In the reasoned opinion, the Commission extended the first complaint to a total of 14 agglomerations, while the second, third and fourth complaints were limited to 28, 22 and 2 agglomerations respectively.

23 In its reply dated 28 November 2016, Ireland submitted new data disclosed by the Environmental Protection Agency (Ireland) on 8 November 2016. Referring to those data, Ireland stated, first, that some of the Commission's criticisms accordingly no longer had a basis. Second, Ireland specified the dates from which the works that were in progress would enable full compliance of the system for collecting and treating urban waste water with Directive 91/271 to be achieved.

24 Since the Commission was not fully satisfied with Ireland's responses to the reasoned opinion, it brought the present action.

III. Request seeking the production of evidence after the close of the written part of the procedure

25 After the close of the written procedure on 5 February 2018, Ireland requested leave, by a letter dated 17 September 2018, to produce new documents pursuant to Article 128(2) of the Rules of Procedure of the Court of Justice.

26 By decision of 18 September 2018, the President of the Chamber admitted those new documents as evidence in the examination of the present action for failure to fulfil obligations, while permitting the Commission to comment on them at the hearing.

IV. The action

A. Preliminary observations

27 The Commission's action is founded on four complaints, alleging, respectively: incorrect application of Article 3(1) and (2) of Directive 91/271 and section A and footnote 1 of Annex I thereto, in respect of 14 agglomerations; incorrect application of Article 4(1) and (3) of that directive, read in conjunction with Article 10 thereof and paragraph 2 of section B of Annex I thereto, in respect of 25 agglomerations; incorrect application of Article 5 of that directive, read in conjunction with Article 10 thereof and paragraph 3 of section B of Annex I thereto, in respect of 21 agglomerations; and incorrect application of Article 12 of that directive in respect of two agglomerations.

28 Ireland denies the alleged failure to fulfil obligations in two respects. First, it puts forward for the majority of the complaints, taken individually, arguments designed to call into question the fact that the Commission has placed before the Court all the information required to enable the Court to establish that there has been a failure to fulfil obligations as alleged. Second, relying on section A and footnote 1 of Annex I to Directive 91/271, Ireland submits, in respect of the whole of the present action, that the complaints put forward by the Commission must be analysed in the light of the exceptional

circumstances with which Ireland has been faced over the last two decades and having regard to the concept of 'best technical knowledge not entailing excessive costs'.

29 That being so, it is appropriate to note at the outset the requirements that must be met in order to rely upon the concept of 'best technical knowledge not entailing excessive costs', as well as the specific framework in which Directive 91/271 lays down the obligations owed by the Member States, before drawing the ensuing conclusions as to the burden of proof.

1. The concepts of 'unusually heavy rainfall' and 'best technical knowledge not entailing excessive costs'

30 Directive 91/271 refers, in section A of Annex I, to the concept of 'best technical knowledge not entailing excessive costs', which specifies, in essence, that the design, construction and maintenance of collecting systems for urban waste water are to be undertaken in accordance with such knowledge not entailing excessive costs. In addition, by footnote 1 of that annex, the EU legislature acknowledged that situations exist in which the urban waste water will not be capable of being collected or treated in its entirety. In particular, it stated that 'it is not possible in practice to construct collecting systems and treatment plants in a way such that all waste water can be treated' and it provided that failure to collect and treat waste water may be tolerated during 'situations such as unusually heavy rainfall'. However, in that case, Member States are to decide on 'measures to limit pollution from storm water overflows' (judgment of 18 October 2012, *Commission* v *United Kingdom*, C-301/10, EU:C:2012:633, paragraph 56).

31 First, as regards the term 'unusually heavy rainfall', that term is mentioned in footnote 1 of Annex I to Directive 91/271 by way of illustration only, since it is preceded by the words 'during situations such as'. Thus, failure to collect or treat waste water may also be allowed in other circumstances (judgment of 18 October 2012, *Commission* v *United Kingdom*, C-301/10, EU:C:2012:633, paragraph 57).

32 However, the objective pursued by Directive 91/271 does not permit the inference that it is normal and common for those other circumstances to arise, in particular as the word 'unusually' clearly indicates that failure to collect or treat waste water cannot occur in normal circumstances (judgment of 18 October 2012, *Commission* v *United Kingdom*, C-301/10, EU:C:2012:633, paragraph 58).

33 Furthermore, it should be pointed out that, where a Member State is faced with an exceptional situation not allowing it to collect or treat waste water, it remains obliged to adopt appropriate measures to limit pollution under footnote 1 of Annex I to Directive 91/271 (judgment of 18 October 2012, *Commission* v *United Kingdom*, C-301/10, EU:C:2012:633, paragraph 60).

34 Also, since the concept of 'unusually heavy rainfall' is not defined by Directive 91/271, it is legitimate for the Commission, in carrying out its supervision of compliance with EU law, to adopt guidelines and, as the Court does not have jurisdiction to define numerically obligations laid down by that directive, the concept of 'unusually heavy rainfall' must therefore be assessed in the light of all the criteria and conditions prescribed by the directive, in particular the concept of 'best technical knowledge not entailing excessive costs' (judgment of 18 October 2012, *Commission* v *United Kingdom*, C-301/10, EU:C:2012:633, paragraph 61).

35 Second, the concept of 'best technical knowledge not entailing excessive costs' must be examined in each specific case in the light of the objective of protecting the environment pursued by Directive 91/271, as it constitutes a concept inherent in all the provisions of that directive designed to secure such an objective whilst avoiding the imposition upon the Member States of unachievable obligations which they might not be able to fulfil, or only at disproportionate cost (see, to that effect, judgment of 18 October 2012, *Commission* v *United Kingdom*, C-301/10, EU:C:2012:633, paragraphs 62 to 64).

36 Thus, examination of that concept requires weighing the best technology and the costs envisaged against the benefits that a more effective water collection or treatment system may provide, so that the

costs incurred are not disproportionate to the benefits obtained (judgment of 18 October 2012, *Commission* v *United Kingdom*, C-301/10, EU:C:2012:633, paragraph 67).

37 Specifically, the Court has held that facilities cannot be regarded as 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, where, first, a Member State has embarked upon a large programme of works proving that there are technological solutions in order to overcome the problem of excessive spills of waste water, but that they have not been applied, and second, such a Member State has decided to finance such works, so that the related costs cannot be regarded as excessive (see, to that effect, judgment of 4 May 2017, *Commission* v *United Kingdom*, C-502/15, not published, EU:C:2017:334, paragraph 44).

2. The burden of proof

38 It is settled case-law 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 any complainants and by the Member State concerned (judgment of 28 January 2016, *Commission* v *Portugal*, C-398/14, EU:C:2016:61, paragraph 47).

39 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 incumbent on the latter to challenge in substance and in detail the information produced and the inferences drawn (judgment of 28 January 2016, *Commission* v *Portugal*, C-398/14, EU:C:2016:61, paragraph 48).

40 In the more specific context of Directive 91/271, it is consequently incumbent on the Member State which seeks to rely on the concept of 'best technical knowledge not entailing excessive costs', with a view to justifying any divergence from the provisions of that directive, to submit to the Court the information enabling it to assess to what extent, in a specific case, the costs that a more effective water collection or treatment system involve would be disproportionate to the benefits obtained.

It should be noted that the EU legislature, conscious of the scope of the infrastructure works 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 (judgment of 4 May 2017, *Commission* v *United Kingdom*, C-502/15, not published, EU:C:2017:334, paragraph 48).

42 Furthermore, 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 (judgment of 28 November 2018, *Commission* v *Slovenia*, C-506/17, not published, EU:C:2018:959, paragraph 50 and the case-law cited).

43 Since Ireland puts forward arguments in respect of each complaint in order to prove the compliance of the systems for collecting and treating urban waste water, and also relies, for the whole of the present action for failure to fulfil obligations, on exceptional circumstances and the concept of 'best technical knowledge not entailing excessive costs' to justify any divergence from the provisions of Directive 91/271, it is appropriate to examine the merits of each complaint put forward by the Commission, before assessing the matters advanced by Ireland to justify the cases in which the Court concludes that there are divergences from the directive's provisions, whilst, under the Court's case-law, even if the Member State concerned does not deny a failure to fulfil obligations, it is incumbent upon the Court, in

any event, to determine whether or not that alleged breach of obligations exists (see, to that effect, judgment of 14 September 2017, *Commission* v *Greece*, C-320/15, EU:C:2017:678, paragraph 21).

B. The first complaint

44 By its first complaint, the Commission contends that Ireland has failed to fulfil its obligations under Article 3(1) and (2) of Directive 91/271, read in conjunction with section A and footnote 1 of Annex I thereto, on the ground, first, that the combined systems for collecting urban waste water of 12 agglomerations do not satisfy the requirements of those provisions inasmuch as there are repeated and excessive spills from them and, second, such a system is entirely lacking in two agglomerations.

45 Ireland challenges in individual instances the data put forward by the Commission in support of its complaint and contests globally the infringement of Article 3 of Directive 91/271 by relying on exceptional circumstances and the concept of 'best technical knowledge not entailing excessive costs'.

46 Since exceptional circumstances and that concept are relied on in order to justify the situations in which a collecting system for urban waste water does not fulfil the requirements of Article 3 of Directive 91/271, it is appropriate first of all to determine whether the evidence submitted by the Commission is capable of proving the complaint as regards each of the agglomerations that the complaint covers.

1. The first part of the first complaint

47 The Commission submits that the collecting systems for urban waste water and rainwater of the agglomerations of Athlone, Ballincollig New, Cavan, Cork City, Enniscorthy, Fermoy, Mallow, Midleton, Osberstown, Roscommon Town, Roscrea and Thurles give rise to spills of untreated waters the frequency and quantity of which do not comply with Article 3(1) of Directive 91/271 and footnote 1 of Annex I thereto.

48 Prompted by information provided by Ireland in its defence, the Commission withdrew the first part of the first complaint so far as concerns the agglomeration of Ballincollig New and the townland of Killagoley in the agglomeration of Enniscorthy.

49 Following a question from the Court at the hearing, Ireland conceded, however, that, in the case of the agglomerations of Athlone, Cork City, Fermoy and Mallow, the data put forward by the Commission showed that the collecting systems for urban waste water did not comply with the requirements of Article 3 of Directive 91/271, while maintaining that the situations of non-compliance thereby admitted had to be assessed in the light of the concept of 'best technical knowledge not entailing excessive costs'.

50 In any event, as has been recalled in paragraph 43 above, it is incumbent upon the Court to determine whether or not the alleged failure to fulfil obligations exists, even in so far as Ireland does not deny the failure.

(a) The agglomeration of Athlone

51 In respect of the agglomeration of Athlone, it is apparent from the data forwarded to the Commission by Ireland in its reply of 11 December 2013 to the initial letter of formal notice of 27 September 2013 that more than 300 spills were recorded for 2011, equivalent to a volume of 144 294 m^3 of urban waste water discharged without prior treatment.

52 In the light of those data, it must be concluded that the collecting system for urban waste water of the agglomeration of Athlone does not comply with Article 3 of Directive 91/271.

(b) The agglomeration of Cavan

(1) Arguments of the parties

53 First, the Commission refers to the document of February 2012 entitled 'Cavan Sewerage Scheme and Treatment Works', annexed to Ireland's reply of 11 December 2013 to the initial letter of formal notice of 27 September 2013, which mentions one storm water overflow that did not comply with the national requirements for discharges from storm water overflows.

54 Second, the Commission refers to the report of the Environmental Protection Agency for 2016 entitled 'Urban Waste Water Treatment in 2016' ('the 2016 EPA Report') which itself refers to the information contained in the annual environmental report for the agglomeration of Cavan indicating the presence of 20 storm water overflows for the period that it covers, of which the status of 14 is unknown, the status of five is compliant with the national requirements transposing Directive 91/271 and the status of one is not compliant with those requirements.

55 Ireland submits, first, that the Commission cannot discharge the burden of proving the failure to fulfil obligations by relying on the fact that the 2016 EPA Report categorises the collecting system for urban waste water of the agglomeration of Cavan as not compliant with the national requirements transposing Directive 91/271, since the fact that that agglomeration is mentioned in the report results solely from the fact that it was included by the Commission in the procedure leading to the present action for failure to fulfil obligations. In any event, it is incumbent upon the Commission to rely on its own evidence and not on data from the Member State in question.

56 Second, Ireland puts forward the improvements in the aforesaid collecting system which have been reflected in a reduction in the number of storm water overflows present in that agglomeration.

(2) Findings of the Court

57 First of all, it is to 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 any complainants and by the Member State concerned (judgment of 28 January 2016, *Commission* v *Portugal*, C-398/14, EU:C:2016:61, paragraph 47).

58 Therefore, the Commission cannot be criticised, as a matter of principle, for making use of the information that is made available to it in order to carry out its task, including information from the Member State concerned itself, where it enables the alleged failure to fulfil obligations to be proved.

59 However, as is apparent from the 2016 EPA Report, upon which, inter alia, the Commission bases the first part of the first complaint, the inclusion of the data relating to the agglomeration of Cavan was due to the fact that that agglomeration was covered by the present procedure for failure to fulfil obligations, irrespective of any assessment of whether its collecting system for urban waste water complies with Article 3 of Directive 91/271.

60 Accordingly, the Commission cannot conclude from the mere mention of the agglomeration of Cavan in the 2016 EPA Report that the collecting system for urban waste water of that agglomeration does not comply with that provision.

61 In the present instance, the Commission states that it is apparent from the document entitled 'Cavan Sewerage Scheme and Treatment Works' of February 2012 that one storm water overflow does not comply with the relevant national requirements. In its reply, the Commission identifies that overflow as being on Thomas Ashe Street and submits that the 2016 EPA Report, which refers to the information contained in the annual environmental report for that agglomeration, supports the conclusion that there is an overflow in the agglomeration that does not comply with those requirements.

62 However, Ireland observes in its rejoinder that that overflow was removed in 2015 and that the 225 mm sewer at that location has been replaced by a new 300 mm gravity sewer following works that

were completed in July 2016.

63 In the absence of additional data, it must be held that the Commission has not provided information allowing a determination that the complaint has been made out so far as concerns the agglomeration of Cavan.

(c) The agglomeration of Cork City

64 In respect of the agglomeration of Cork City, it is apparent from the data forwarded to the Commission by Ireland in its reply of 28 November 2016 to the reasoned opinion that 853 spills were counted for 2015, equivalent to a volume of 5 948 782 m^3 of urban waste water discharged without prior treatment.

65 In the light of those data, it must be concluded that the collecting system for urban waste water of the agglomeration of Cork City does not comply with Article 3 of Directive 91/271.

(d) The agglomeration of Enniscorthy

66 After taking note that, in the townland of Killagoley in the agglomeration of Enniscorthy, urban waste water is collected in compliance with Directive 91/271, the Commission indicates in its reply that the 2016 EPA Report refers to information contained in the annual environmental report for that agglomeration, which states that 1% of the total volume of waste water generated was discharged via storm water overflows.

67 In that regard, it is apparent from that report that, out of the six active storm water overflows for the agglomeration, one is considered not to comply with the national requirements transposing Directive 91/271. It was, moreover, activated 30 times in 2016.

68 Therefore, it must be held that the Commission has proved that the collecting system for urban waste water of the agglomeration of Enniscorthy, apart from the townland of Killagoley, does not meet, in part, the requirements of Article 3 of Directive 91/271.

(e) The agglomeration of Fermoy

69 In respect of the agglomeration of Fermoy, it is apparent from the data forwarded to the Commission by Ireland in its reply of 25 January 2016 to the additional letter of formal notice that 108 spills were counted for 2014, equivalent to a volume of 71 500 m^3 of urban waste water discharged without prior treatment, while 57 spills were recorded for 2015, equivalent to a volume of 35 337 m^3 of untreated urban waste water.

70 In the light of those data, it must be concluded that the collecting system for urban waste water of the agglomeration of Fermoy does not comply with Article 3 of Directive 91/271.

(f) The agglomeration of Mallow

71 In respect of the agglomeration of Mallow, it is apparent from the data forwarded to the Commission by Ireland in its reply of 25 January 2016 to the additional letter of formal notice that, for 2014, out of the eight active storm water overflows, the estimated number of spills for a single one of those overflows was 121, corresponding to a volume of 480 000 m^3 of untreated urban waste water.

72 In the light of those data, it must be concluded that the collecting system for urban waste water of the agglomeration of Mallow does not comply with Article 3 of Directive 91/271.

(g) The agglomeration of Midleton

(1) Arguments of the parties

73 As regards the agglomeration of Midleton, the Commission bases the first part of its first complaint on various reports and on a complaint sent to it in order to demonstrate that the collecting system for urban waste water of that agglomeration does not comply with Article 3 of Directive 91/271.

74 First, it relies on the data resulting fi the study by White Young Green on spillages in the agglomeration of Midleton in 2011 and 2012.

75 Second, the Commission refers to the report by WYG Engineering of November 2008 and the report by Mott MacDonald of August 2011, entitled 'Midleton Sewerage Scheme — Assessment of Pump Overflow', in order to prove that the treatment plant of the agglomeration of Midleton suffers from under-capacity in relation to the load to be treated and that the pumped flows and storage capacity must be increased considerably. Such a finding is, moreover, said to be confirmed by data communicated to the Commission following a complaint that was sent to it.

76 Third, the Commission sets out the data of the 2016 EPA Report for that agglomeration.

77 Ireland contends, as its principal submission, that that evidence is inadmissible, on the ground that it was not sent to it before the Commission brought the present action.

78 Ireland pleads that, in any event, the data upon which the Commission relies no longer reflect the current situation. Thus, only eight spills were recorded for 2015. Furthermore, the 'biochemical oxygen demand' ('BOD') and 'chemical oxygen demand' ('COD') standards prescribed in Article 4 of Directive 91/271, read in conjunction with Table 1 of Annex I thereto, were met for 2013 to 2016.

(2) Findings of the Court

79 As regards the admissibility of the evidence adduced by the Commission, it must be stated, first of all, that in its reply of 11 December 2013 to the initial letter of formal notice of 27 September 2013, Ireland itself referred to the study by White Young Green on spillages in 2011 and 2012.

80 Next, it is apparent from the case file that the WYG Engineering report of November 2008 was commissioned by Cork County Council.

81 As regards, finally, the Mott MacDonald report of August 2011 and the complaint sent to the Commission, those documents, like those cited in the preceding paragraphs, were mentioned in the additional letter of formal notice of 25 September 2015, before being annexed to the Commission's application.

82 Therefore, Ireland was able to obtain those documents directly or, at the very least, acting diligently, to ask the Commission to produce them at the appropriate time.

83 In any event, in order to guarantee the rights of defence of the Member State concerned, the subject matter of an action under Article 258 TFEU for failure to fulfil obligations is determined by the Commission's reasoned opinion, so that the action must be based on the same grounds and pleas as that opinion (judgment of 8 July 2010, *Commission* v *Portugal*, C-171/08, EU:C:2010:412, paragraph 25).

84 Here, Ireland does not dispute that the grounds and pleas of the Commission's reasoned opinion and application in the present proceedings are identical.

85 Consequently, the evidence upon which the Commission bases the first part of its first complaint as regards the agglomeration of Midleton must be declared admissible.

86 The Commission moreover relied on the 2016 EPA Report, which refers to the information contained in the annual environmental report for the agglomeration, from which it is apparent that four storm water overflows were active in 2016 and that there were 158 spills from them, equivalent to a volume of 561 679 m^3 of untreated urban waste water.

87 In that regard, first, Ireland cannot plead that these data from 2016 are old since it raises against them data from 2015 in order to challenge the matters put forward by the Commission.

88 Second, as Article 3 of Directive 91/271 lays down an obligation to collect all urban waste water, the fact that the prescribed water treatment standards in Article 4 of Directive 91/271, read in conjunction

with Table 1 of Annex I thereto, were met for 2013 to 2016 has no bearing on whether the collecting system for urban waste water complies with Article 3 of the directive.

89 In the light of those factors, it must be concluded that the collecting system for urban waste water of the agglomeration of Midleton does not comply with Article 3 of Directive 91/271.

(h) The agglomeration of Osberstown

90 As regards the agglomeration of Osberstown, the Commission notes the presence of 22 storm water overflows and points out that upgrade works are in progress.

91 Whilst the existence of storm water overflows and of ongoing upgrade works is an indication that the collecting system for urban waste water is liable, in certain circumstances, to give rise to spillages and discharges of untreated urban waste water, the fact remains that, in the absence of specific and precise data concerning the compliance of those overflows and their activity, the existence of the overflows and works amounts, at most, to only a presumption of non-compliance.

92 Furthermore, and as has been noted in paragraph 60 above, the mere fact that the agglomeration of Osberstown has been mentioned in the 2016 EPA Report cannot in itself suffice to conclude that the collecting system for urban waste water of that agglomeration does not comply with Article 3 of Directive 91/271. Moreover, as the Commission has observed in its reply, there does not seem to be a reference to the data relating to that agglomeration in the 2016 EPA Report.

93 In the absence of additional data, it must be held that the Commission has not provided information allowing a determination that the complaint has been made out so far as concerns the agglomeration of Osberstown.

(i) The agglomeration of Roscommon Town

94 It is apparent from Ireland's reply to the additional letter of formal notice that there are 10 storm water overflows in the agglomeration of Roscommon Town. Also, the 2016 EPA Report refers to the information contained in the annual environmental report for that agglomeration recording six storm water overflows, none of which complies with the national requirements transposing Directive 91/271.

95 In the light of those data, it must be concluded that the collecting system for urban waste water of the agglomeration of Roscommon Town does not comply with Article 3 of Directive 91/271.

(j) The agglomeration of Roscrea

96 As regards the agglomeration of Roscrea, the Commission notes the presence of four storm water overflows and points out that upgrade works are in progress. In that regard, the Commission refers to the 2016 EPA Report, which itself refers to the information contained in the annual environmental report for that agglomeration, but does not contain any particulars as to the compliance and activity of those overflows.

97 Whilst the existence of storm water overflows and of ongoing upgrade works is an indication that the collecting system is liable, in certain circumstances, to give rise to spillages and discharges of untreated urban waste water, the fact remains that, in the absence of specific and precise data concerning the compliance of those overflows and their activity, the existence of the overflows and works amounts, at most, to only a presumption of non-compliance.

98 Furthermore, and as has been noted in paragraph 60 above, the mere fact that the agglomeration of Roscrea has been mentioned in the 2016 EPA Report, which refers to the information contained in the annual environmental report for that agglomeration, cannot in itself suffice to conclude that the collecting system for urban waste water of that agglomeration does not comply with Article 3 of Directive 91/271.

99 In the absence of additional data, it must be held that the Commission has not provided information allowing a determination that the complaint has been made out so far as concerns the agglomeration of

Roscrea.

(k) The agglomeration of Thurles

100 The Commission notes the presence of four storm water overflows in the agglomeration of Thurles and points out that upgrade works are in progress. In that regard, the Commission refers to the 2016 EPA Report, which itself refers to the information contained in the annual environmental report for that agglomeration, but does not contain any particulars as to the compliance and activity of those overflows.

101 Whilst the existence of storm water overflows and of ongoing upgrade works is an indication that the collecting system is liable, in certain circumstances, to give rise to spillages and discharges of untreated urban waste water, the fact remains that, in the absence of specific and precise data concerning the compliance of those overflows and their activity, the existence of the overflows and works amounts, at most, to only a presumption of non-compliance.

102 Furthermore, and as has been noted in paragraph 60 above, the mere fact that the agglomeration of Thurles has been mentioned in the 2016 EPA Report, which refers to the information contained in the annual environmental report for that agglomeration, cannot in itself suffice to conclude that the collecting system for urban waste water of that agglomeration does not comply with Article 3 of Directive 91/271.

103 In the absence of additional data, it must be held that the Commission has not provided information allowing a determination that the complaint has been made out so far as concerns the agglomeration of Thurles.

2. The second part of the first complaint

(a) Arguments of the parties

104 The Commission submits that Ireland has not put in place appropriate collecting systems for urban waste water in the agglomerations of Ringaskiddy and Gaoth Dobhair.

105 However, prompted by information provided by Ireland in its defence, the Commission withdrew the second part of the first complaint so far as concerns the agglomeration of Gaoth Dobhair.

106 As regards the agglomeration of Ringaskiddy, the Commission states that the urban waste water, corresponding to a load of 116 982 p.e., is not collected.

107 Ireland states that 85% of the total load generated by that agglomeration comes from industrial activities that have their own treatment plants. Accordingly, only the loads of the towns of Carrigaline and Crosshaven should be taken into consideration for the purpose of assessing compliance with Article 3 of Directive 91/271.

108 After taking note in the reply that a load of 17 500 p.e. had to be adopted for the agglomeration of Ringaskiddy, the Commission, relying on the data submitted by Ireland in its reply of 25 January 2016 to the additional letter of formal notice, reiterates that no collecting system exists for that agglomeration.

(b) Findings of the Court

109 Since it is not disputed that no collecting system for urban waste water exists in respect of the load of 17 500 p.e. in the agglomeration of Ringaskiddy, it must be concluded that the collecting system for urban waste water of that agglomeration does not comply with Article 3 of Directive 91/271.

110 It follows from all those considerations that the collecting systems for urban waste water of the agglomerations of Athlone, Cork City, Enniscorthy apart from the townland of Killagoley, Fermoy, Mallow, Midleton, Ringaskiddy and Roscommon Town do not comply with Article 3 of Directive 91/271.

111 Since Ireland submits, however, that the compliance of the collecting systems for urban waste water in those agglomerations must be assessed in the light of section A and footnote 1 of Annex I to Directive 91/271 and application of the concept of 'best technical knowledge not entailing excessive costs' would therefore justify any partial divergence from Article 3 of that directive, the matters put forward by Ireland in that regard should be examined in the light of the principles noted in paragraphs 30 to 37 above.

3. Application of exceptional circumstances and of the concept of 'best technical knowledge not entailing excessive costs'

(a) Arguments of the parties

112 In general terms, Ireland notes the exceptional circumstances that it has faced in the past few decades in the sector of urban waste water management and treatment, stressing the initial effort necessary to render the network for collecting and treating Irish urban waste water compliant, the major reform undertaken in that sector and the effects of an economic crisis on the carrying out of that reform.

113 In particular, Ireland submits that the complaints put forward by the Commission must be analysed having regard to the investment made and works carried out by Ireland from 2000 to 2013, in the context of the fundamental reform of the system for treating urban waste water, a reform which was, however, profoundly affected by the economic crisis that Ireland suffered in 2008. Over that period, it was nevertheless possible to invest EUR 3.5 billion in order to upgrade the infrastructure for collecting and treating urban waste water.

114 In that context, Ireland states that there will be substantial investment in the short term in order to complete that upgrading. The investment amounts to EUR 2.7 billion for the period from 2014 to 2021 and will enable the system for collecting and treating urban waste water to be rendered fully compliant with Directive 91/271.

115 On a more individual level, Ireland notes, regarding certain agglomerations, the technical, legal or administrative difficulties which have been able to delay the carrying out of the necessary works.

116 Furthermore, Ireland maintains that, in view of the infrequency and limited size of the spills recorded in certain agglomerations, the individual instances of malfunction of the relevant collecting systems for urban waste water must be regarded as resulting from unusually heavy rainfall within the meaning of footnote 1 of Annex I to Directive 91/271.

117 The Commission notes that application of the concept of 'best technical knowledge not entailing excessive costs' is merely the expression of the principle of proportionality in connection with investment relating to infrastructure for collecting and treating waste water. In that context, Ireland fails to adduce any evidence proving that the costs necessary in order to render the systems for collecting and treating waste water compliant with Directive 91/271 are disproportionate to the environmental protection benefits.

(b) Findings of the Court

118 As has been recalled in paragraph 34 above, the concept of 'unusually heavy rainfall' must be assessed in the light of all the criteria and conditions prescribed by Directive 91/271, in particular the concept of 'best technical knowledge not entailing excessive costs'.

119 Application of the latter concept must be examined in each specific case and requires weighing the best technology and the costs envisaged against the benefits that a more effective system for collecting or treating urban waste water may provide, so that the costs incurred are not disproportionate to the benefits obtained.

120 In that regard, the Court has held that facilities cannot be regarded as 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, where, first, a Member State has embarked upon a large programme of works proving that there are technological solutions in order to overcome the problem of excessive spills of

waste water, but that they have not been applied, and second, such a Member State has decided to finance such works, so that the related costs cannot be regarded as excessive (see, to that effect, judgment of 4 May 2017, *Commission* v *United Kingdom*, C-502/15, not published, EU:C:2017:334, paragraph 44).

121 Since Ireland states that it has embarked upon a programme of major reform of the system for collecting and treating urban waste water, it is proven, first, that there are technological solutions in order to overcome the problem of excessive spills before urban waste water is treated. Second, the costs of the works necessary for that purpose cannot be regarded as excessive, inasmuch as Ireland has decided to carry them out.

122 In this connection, it should be borne in mind that, in accordance with settled case-law, a Member State may not plead practical or administrative difficulties in order to justify non-compliance with the obligations and time limits laid down by a directive. The same holds true for financial difficulties, which it is for the Member States to overcome by adopting appropriate measures (see, to that effect, judgment of 18 October 2012, *Commission* v *United Kingdom*, C-301/10, EU:C:2012:633, paragraph 66 and the case-law cited).

123 Thus, mere general mention of the financial difficulties connected with the economic crisis cannot justify the fact that the collecting systems for urban waste water of the various agglomerations covered by the first complaint do not comply with Article 3 of Directive 91/271.

124 That having been said, as the Commission itself acknowledged at the hearing the existence of such an economic crisis could, for each specific case, be taken into account in the context of the balancing exercise referred to in paragraphs 36 and 119 above.

125 However, it must be stated that Ireland adduces nothing capable of proving that the costs to be incurred, in order to ensure that the collecting systems for urban waste water of the various agglomerations covered by the first complaint are compliant, are disproportionate to the resulting advantages.

126 Furthermore, mention of the works that remain to be carried out so far as concerns the collecting systems of each of the agglomerations covered by the first complaint attests the feasibility of putting in place the facilities necessary to render the systems compliant with Directive 91/271.

127 In that regard, it is to be borne in mind that the EU legislature, conscious of the scope of the infrastructure works that resulted from the transposition 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 (judgment of 4 May 2017, *Commission* v *United Kingdom*, C-502/15, not published, EU:C:2017:334, paragraph 48).

128 As regards, in particular, the agglomeration of Midleton, Ireland states that the frequency of spills is very low, so that they cannot be classified as usual events.

129 However, as the Commission submitted in its reply, the 2016 EPA Report refers to the information contained in the annual environmental report for that agglomeration, from which it is apparent that four storm water overflows were active in 2016 and that there were 158 spills from them, equivalent to a volume of 561 679 m³ of untreated urban waste water.

130 In the absence of further details as to the spills recorded in respect of the agglomeration of Midleton, Ireland cannot assert that those spills result from unusual meteorological events the taking account of which would entail costs disproportionate to the benefits obtained.

131 It follows from all those considerations that the collecting of urban waste water in the agglomerations of Athlone, Cork City, Enniscorthy apart from the townland of Killagoley, Fermoy, Mallow, Midleton, Ringaskiddy and Roscommon Town does not comply with Article 3(1) and (2) of Directive 91/271 and section A of Annex I thereto.

C. *The second complaint*

132 By its second complaint, the Commission contends that Ireland has failed to fulfil its obligations under Article 4(1) and (3) of Directive 91/271, read in conjunction with Article 10 thereof and section B of Annex I thereto, because, first, there is no treatment plant in six agglomerations, second, the treatment plants existing in seven agglomerations are unable to ensure compliance with the BOD and COD standards as prescribed in section B and Table 1 of Annex I to Directive 91/271 and, third, Article 3 of that directive is not complied with so far as concerns 12 agglomerations.

133 Ireland contests globally the infringement of Article 4 of Directive 91/271 by relying on application of the concept of 'best technical knowledge not entailing excessive costs' and challenges individually the data put forward by the Commission in support of this complaint as regards certain agglomerations.

134 Since exceptional circumstances and the concept of 'best technical knowledge not entailing excessive costs' are relied on in order to justify the situations in which a system for treating urban waste water does not fulfil the requirements of Article 4 of Directive 91/271, it is appropriate at the outset to determine whether the evidence submitted by the Commission is capable of justifying in law the second complaint as regards each of the agglomerations covered by it.

1. *The first part of the second complaint*

(a) *Arguments of the parties*

135 The Commission submits that the requirements of Article 4(1) and (3) of Directive 91/271 are not complied with on account of the absence of waste water treatment facilities for the agglomerations of Arklow, Cobh, Killybegs, Passage/Monkstown, Ringaskiddy and Youghal.

136 Ireland pleads, first, difficulties in planning and achieving the required facilities. It states, second, that the works enabling waste water to be treated in compliance with the requirements of Article 4(1) and (3) of Directive 91/271 are in the course of being completed or, at least, are planned.

(b) *Findings of the Court*

137 Article 4(1) of Directive 91/271 provides that all urban waste water entering collecting systems must before discharge be subject to secondary treatment or an equivalent treatment.

138 Under Article 4(3) of Directive 91/271, that secondary or equivalent treatment must be carried out by treatment plants the discharges of which satisfy the requirements of section B of Annex I to the directive.

139 As is apparent from Ireland's reply of 25 January 2016 to the additional letter of formal notice and its reply of 28 November 2016 to the reasoned opinion, urban waste water of the agglomerations of Arklow, Cobh, Killybegs, Passage/Monkstown, Ringaskiddy and Youghal is not treated before discharge, on account of the absence of facilities necessary for that purpose.

140 As 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, the Court cannot take account, in that regard, of any subsequent changes (judgment of 28 January 2016, *Commission* v *Portugal*, C-398/14, EU:C:2016:61, paragraph 49).

141 Here, the reasoned opinion, dated 30 September 2016, set Ireland a period of two months from receipt thereof for complying with its obligations under Article 4 of Directive 91/271. The period granted for compliance thus expired on 30 November 2016.

142 As regards the agglomerations referred to in the first part of the second complaint, Ireland indicates in its defence that, on the date on which that pleading was lodged, works concerning the treatment plants were in progress or scheduled in order to meet the obligations under Article 4 of Directive 91/271. Accordingly, it is established that, at the end of the period laid down by the reasoned opinion, those

agglomerations did not comply with the obligations stemming from Article 4, since they did not have operational waste water treatment facilities.

143 Therefore, the second complaint must be considered well founded so far as concerns the agglomerations of Arklow, Cobh, Killybegs, Passage/Monkstown, Ringaskiddy and Youghal.

2. The second part of the second complaint

(a) Arguments of the parties

144 Relying on Ireland's reply of 25 January 2016 to the additional letter of formal notice, the Commission states that the capacity of the facilities of the agglomerations of Ballybofey/Stranorlar, Enfield, Enniscorthy, Ringsend, Shannon Town and Tubbercurry does not enable secondary or equivalent treatment of the loads of waste water to be ensured before discharge.

145 In addition, as regards the agglomeration of Rathcormac, the Commission states that the BOD/COD standards are not complied with.

146 As regards the agglomerations of Ballybofey/Stranorlar, Enniscorthy, Ringsend, Shannon Town and Tubbercurry, Ireland acknowledges the need to increase the capacity of the waste water treatment facilities. It states that works are in the course of being finalised in order to remedy those deficiencies.

147 As regards the agglomeration of Enfield, Ireland states that an assessment of the treatment plant's capacity is underway but that a capacity upgrade is not thought to be required as the BOD/COD standards are complied with.

148 As regards the agglomeration of Rathcormac, Ireland states that the non-compliance of the waste water treatment facility resulted from operational issues that were to be resolved at the end of 2017.

(b) Findings of the Court

149 In support of the second part of the second complaint, the Commission relies on the data dated 31 December 2014 which were disclosed to it by Ireland in Ireland's reply of 25 January 2016 to the additional letter of formal notice and in its reply of 28 November 2016 to the reasoned opinion.

150 First of all, it is apparent from those documents that:

- the load generated by the agglomeration of Ballybofey/Stranorlar is 5 532 p.e., the treatment capacity of the facilities is 4 000 p.e., and the BOD/COD standards were complied with so far as concerns 2013 to 2015;

- the load generated by the agglomeration of Enniscorthy as regards the secondary discharge was 2 107 p.e., the treatment capacity of the facilities was 1 000 p.e., and the BOD/COD standards were not complied with so far as concerns those years;

- the load generated by the agglomeration of Ringsend is 2 124 000 p.e., the treatment capacity of the facilities is 1 640 000 p.e., and the BOD/COD standards were not complied with so far as concerns those years;

- the load generated by the agglomeration of Shannon Town is 26 740 p.e., the treatment capacity of the facilities is 12 500 p.e., and the BOD/COD standards were not complied with so far as concerns those years; and

- the load generated by the agglomeration of Tubbercurry is 2 283 p.e., the treatment capacity of the facilities is 1 400 p.e., and the BOD/COD standards were not complied with so far as concerns those years.

151 Next, so far as concerns the agglomeration of Enfield, Ireland's reply to the reasoned opinion refers to a generated load of 5 873 p.e. for 2015, whereas the treatment capacity of the facilities is 3 500 p.e. It

is, however, also apparent from that reply that the BOD/COD standards had been complied with since 2013.

152 As Article 4(1) of Directive 91/271 contains an unconditional obligation requiring secondary or equivalent treatment of all urban waste water before discharge, it must be found that, in the light of the under-capacity of the facilities of the agglomerations of Ballybofey/Stranorlar and Enfield, the requirements of that provision are not complied with so far as concerns those agglomerations.

153 Even though the BOD/COD standards were complied with so far as concerns waters treated in the facilities of those agglomerations in respect of 2013 to 2015, the fact remains that a proportion of the urban waste water was not treated at all.

154 The Court has already held that, since discharges of waters that have not been treated at all do not satisfy the requirements of section B of Annex I to Directive 91/271, the treatment of urban waste water by facilities suffering from under-capacity cannot be regarded as complying with Article 4(3) of that directive (see, to that effect, judgment of 11 September 2008, *Commission* v *Ireland*, C-316/06, not published, EU:C:2008:487, paragraphs 12 and 22).

155 Regarding, finally, the agglomeration of Rathcormac, as is apparent from the data contained in Ireland's reply of 25 January 2016 to the additional letter of formal notice and in its reply of 28 November 2016 to the reasoned opinion, the load generated is 2 602 p.e, while the capacity of that agglomeration's facilities is 4 000 p.e. However, the BOD/COD standards prescribed in section B and Table 1 of Annex I to Directive 91/271 were not complied with in respect of 2014 to 2016.

156 Ireland states in its defence that the exceeding of those standards is the result of operational issues but does not provide further explanation.

157 That being so, it must be held that the waste water of the agglomeration of Rathcormac is not subject to appropriate treatment before discharge. The complaint alleging non-compliance with Article 4(3) of Directive 91/271, read in conjunction with section B and Table 1 of Annex I thereto, is accordingly well founded so far as concerns that agglomeration.

158 Therefore, treatment of the waters of the agglomerations of Ballybofey/Stranorlar, Enfield, Enniscorthy, Ringsend, Shannon Town and Tubbercurry does not comply with Article 4(1) and (3) of Directive 91/271, read in conjunction with Article 10 thereof and section B and Table 1 of Annex I thereto. Treatment of the waters of the agglomeration of Rathcormac does not comply with Article 4(3) of Directive 91/271, read in conjunction with Article 10 thereof and section B and Table 1 of Annex I thereto.

3. The third part of the second complaint

(a) Arguments of the parties

159 The Commission submits that Ireland has infringed Article 4(1) and (3) of Directive 91/271, read in conjunction with Article 10 thereof and section B of Annex I thereto, so far as concerns the agglomerations of Athlone, Ballincollig New, Cavan, Cork City, Fermoy, Mallow, Midleton, Osberstown, Roscommon Town, Roscrea, Thurles and Gaoth Dobhair.

160 Prompted by information provided by Ireland in its defence, the Commission withdrew the third part of the second complaint so far as concerns the agglomeration of Gaoth Dobhair.

161 The Commission justifies the infringement of Article 4(1) and (3) of Directive 91/271 on the basis of the infringement of Article 3 of that directive.

162 In addition to exceptional circumstances and application of the concept of 'best technical knowledge not entailing excessive costs', Ireland submits that appropriate treatment of waste water is ensured so far as concerns the agglomerations of Athlone, Ballincollig New, Cavan, Fermoy, Mallow, Midleton, Osberstown, Roscommon Town and Thurles and relies, in that regard, on the data contained in its reply

of 25 January 2016 to the additional letter of formal notice and in its reply of 28 November 2016 to the reasoned opinion.

(b) Findings of the Court

163 As the Commission bases the third part of the second complaint exclusively on the fact that the collecting systems for urban waste water in certain agglomerations do not comply with Article 3 of Directive 91/271, it should be noted, first, that, as is apparent from paragraphs 63, 93, 99 and 103 above, the Commission has not established that Ireland has failed to fulfil its obligations under Article 3 of Directive 91/271 so far as concerns the collecting systems for urban waste water of the agglomerations of Cavan, Osberstown, Roscrea and Thurles. In addition, the Commission withdrew the first part of the first complaint so far as concerns the agglomeration of Ballincollig New.

164 Therefore, on the basis of the Commission's line of argument, the third part of the second complaint can only concern the agglomerations of Athlone, Cork City, Fermoy, Mallow, Midleton and Roscommon Town.

165 First, under Article 4(1) of Directive 91/271, all urban waste water entering collecting systems must before discharge be subject to secondary treatment or an equivalent treatment.

166 Consequently, in so far as agglomerations are not equipped with a system enabling all their urban waste water to be collected in accordance with Article 3 of Directive 91/271, the obligation laid down in Article 4 of the directive to subject all discharges to secondary or equivalent treatment is a fortiori not fulfilled (judgment of 19 July 2012, *Commission* v *Italy*, C-565/10, not published, EU:C:2012:476, paragraph 34).

167 Second, pursuant to Article 4(3) of Directive 91/271, discharges from urban waste water treatment plants are to satisfy the requirements of section B of Annex I to the directive.

168 The third recital of Directive 91/271 explains that there is a general need for secondary treatment of urban waste water in order to prevent the environment from being adversely affected by its disposal.

169 Ireland states that, despite the lack of treatment plants and, consequently, of treatment of urban waste water in certain agglomerations, the BOD/COD standards are complied with.

170 It must be stated that, where the establishment of a collecting system for urban waste water has been considered to be justified in a given agglomeration, Article 4(1) of Directive 91/271 lays down an obligation of result so far as concerns treatment of the urban waste water by a treatment plant.

171 In addition, paragraph 1 of section B of Annex I to Directive 91/271 specifies that waste water treatment plants are to 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.

172 Therefore, the provisions of Directive 91/271 lay down treatment obligations designed to achieve systematic and lasting compliance with the standards that they establish so far as concerns waste water discharges. To that end, only the collection of all the waste water enables such compliance to be ensured. If there is no system enabling all urban waste water to be collected, any compliance with the BOD/COD standards that is recorded cannot be systematic in nature, since it may vary depending on factors connected with various circumstances, such as dilution of the waste water or the conduct of those emitting it.

173 In any event, paragraph 1 of section B of Annex I to Directive 91/271 lays down the obligation to take representative samples of waste water before it is discharged from treatment plants. In the absence of a reliable collecting system, the directive does not offer any other solution enabling compliance with the BOD/COD standards to be proved.

174 Consequently, it must be found that the treatment of urban waste water in the agglomerations of Athlone, Cork City, Fermoy, Mallow, Midleton and Roscommon Town does not comply with

Article 4(1) and (3) of Directive 91/271, read in conjunction with Article 10 thereof and section B of Annex I thereto.

4. Application of exceptional circumstances and of the concept of 'best technical knowledge not entailing excessive costs'

175 In addition to the general context, as noted in paragraphs 112 to 114 above, in which the programme for upgrading urban waste water management was initiated, Ireland pleads, in individual instances, legal problems that have led to the treatment of urban waste water not complying with Article 4 of Directive 91/271.

176 Ireland states, furthermore, that the completion in the near future of the works concerning the urban waste water management systems of certain agglomerations covered by the second complaint should within the short term enable the facilities concerned to be rendered compliant with Directive 91/271.

177 In the light of the considerations noted in paragraphs 118 to 121 above and the fact that Ireland has produced nothing capable of demonstrating that the costs of rendering compliant the facilities for treating urban waste water in the agglomerations covered by the second complaint are disproportionate, it must be concluded that the treatment of urban waste water in the agglomerations of Arklow, Athlone, Ballybofey/Stranorlar, Cobh, Cork City, Enfield, Enniscorthy, Fermoy, Killybegs, Mallow, Midleton, Passage/Monkstown, Rathcormac, Ringaskiddy, Ringsend, Roscommon Town, Shannon Town, Tubbercurry and Youghal does not comply with Article 4(1) and/or (3) of Directive 91/271, read in conjunction with Article 10 thereof and section B of Annex I thereto.

D. The third complaint

178 By its third complaint, the Commission submits that the more stringent treatment of urban waste water entering sensitive areas and the corresponding catchment areas, under Article 5(2) and (3) of Directive 91/271, is not carried out in the agglomerations of Athlone, Ballincollig New, Cavan, Cork City, Dundalk, Enniscorthy, Fermoy, Killarney, Killybegs, Longford, Mallow, Midleton, Navan, Nenagh, Osberstown, Portarlington, Ringsend, Roscrea, Thurles, Tralee and Waterford City. Prompted by information provided by Ireland in its defence, the Commission withdrew this complaint as regards the agglomeration of Waterford City.

179 First, the Commission pleads the non-compliance of the collecting systems for waste water of the agglomerations covered by the first complaint in the present action for failure to fulfil obligations in order to substantiate non-compliance of the treatment systems with Article 5 of Directive 91/271.

30 Second, the Commission relies in respect of the other agglomerations covered by the third complaint on the data that were submitted to it by Ireland in its replies to the additional letter of formal notice and the reasoned opinion.

1. The agglomerations whose collecting systems for urban waste water do not comply with Article 3 of Directive 91/271

181 Under Article 5(1) of Directive 91/271, Member States must identify sensitive areas on the basis of the criteria laid down in Annex II to the directive.

182 Article 5(2) and (3) of Directive 91/271 lays down an obligation to treat urban waste water before discharge into sensitive areas, in such a way that the standards prescribed in section B of Annex I to the directive are complied with. That urban waste water must be subjected to more stringent treatment than the treatment provided for in Article 4 of the directive.

183 Such an obligation also applies as regards discharges from treatment plants situated in the relevant catchment areas of sensitive areas, pursuant to Article 5(5) of Directive 91/271.

184 By analogy with what has been stated in paragraph 166 above, if the collecting system for urban waste water of an agglomeration does not comply with Article 3 of Directive 91/271, the view must a fortiori

be taken that the treatment of the urban waste water of that agglomeration that is discharged into a sensitive area cannot be ensured.

185 It is common ground that urban waste water of the agglomerations of Athlone, Cork City, Enniscorthy apart from the townland of Killagoley, Fermoy, Mallow and Midleton is discharged into areas that have been identified as sensitive in accordance with the criteria defined in Annex II to Directive 91/271 and that those agglomerations have a p.e. of more than 10 000.

186 Also, it is clear from paragraph 131 above that the collecting systems for urban waste water of those agglomerations do not comply with Article 3 of Directive 91/271.

187 Therefore, the treatment of urban waste water in those agglomerations cannot comply with Article 5 of Directive 91/271, read in conjunction with section B of Annex I thereto.

188 On the other hand, as is apparent from paragraphs 63, 93, 99 and 103 above, the Commission has not proved to the required legal standard that that the collecting systems for urban waste water of the agglomerations of Cavan, Osberstown, Roscrea and Thurles do not comply with Article 3 of Directive 91/271. It is also apparent from paragraph 48 above that the Commission withdrew the first part of the first complaint so far as concerns the agglomeration of Ballincollig New.

189 In the case of the agglomerations of Osberstown and Thurles, the Commission has not provided other material in support of the third complaint, which must be rejected in their regard. However, in the case of the treatment of urban waste water of the agglomerations of Ballincollig New, Cavan and Roscrea, the material provided by the Commission in support of this complaint will be examined in paragraphs 193 to 221 below.

2. The agglomerations of Dundalk, Killybegs, Portarlington, Ringsend and Tralee

190 The Commission relies on Ireland's replies to the additional letter of formal notice and reasoned opinion indicating that treatment of the waste water of the agglomerations of Dundalk, Killybegs, Portarlington, Ringsend and Tralee, which do not have any treatment plant or whose treatment is insufficient, would be compliant upon completion of the works in progress.

191 Ireland does not dispute that information, but states that the works in progress should enable compliance with the requirements of Article 5 of Directive 91/271 to be ensured:

- in respect of the agglomeration of Dundalk, in the third quarter of 2017;
- in respect of the agglomeration of Killybegs, on 1 January 2018;
- in respect of the agglomeration of Portarlington, in the second quarter of 2017;
- in respect of the agglomeration of Ringsend, in the second quarter of 2022; and
- in respect of the agglomeration of Tralee, in the fourth quarter of 2017.

192 Since it is undisputed 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 that, according to the information disclosed by Ireland, the works in progress will come to an end after 30 November 2016, the third complaint is well founded so far as concerns the agglomerations of Dundalk, Killybegs, Portarlington, Ringsend and Tralee.

3. The agglomerations of Ballincollig New, Cavan, Killarney, Longford, Navan, Nenagh and Roscrea

(a) Arguments of the parties

193 The Commission, relying on the data as resulting from Ireland's replies to the additional letter of formal notice and reasoned opinion, submits that urban waste water discharged into sensitive areas is not treated in accordance with the requirements of Article 5 of Directive 91/271, read in conjunction

with Article 10 thereof and section B and Table 2 of Annex I thereto, so far as concerns the agglomerations of Ballincollig New, Cavan, Killarney, Longford, Navan, Nenagh and Roscrea. More specifically, the Commission submits that, even assuming that the treatment complies with those provisions in the case of phosphorus as regards the agglomerations of Cavan, Killarney, Longford, Navan, Nenagh and Roscrea, nitrogen reduction is not carried out although nitrogen is declared as a limiting nutrient for the sensitive areas into which the treatment plants of those agglomerations discharge waste water. In addition, the Commission observes in respect of the agglomeration of Ballincollig New that, following further assessments carried out by the Environmental Protection Agency, Ireland stated that nutrient removal is not required.

194 Ireland submits that the data put forward by the Commission have been updated, as is shown by the letter of 8 November 2016 from the Environmental Protection Agency to the Irish Minister for Housing, Planning, Community and Local Government, which it annexed to the reply to the reasoned opinion. Ireland states that it is clear from that document that it was concluded in respect of the agglomerations of Cavan, Killarney, Longford, Navan, Nenagh and Roscrea that a reduction of nitrogen as a limiting nutrient was no longer necessary so far as concerns discharges from those agglomerations' treatment plants into the sensitive areas concerned. As regards the agglomeration of Ballincollig New, Ireland states that that document concludes that the area into which the waters treated by that agglomeration's system is discharged is not sensitive.

195 The Commission observes that the documents submitted at the time of the Environmental Protection Agency's letter of 8 November 2016 amount to preliminary matters that call for additional decisions in order to alter the designation of the sensitive area concerned and the discharge licences and permits that relate thereto. It refers in that regard to the judgment of 4 May 2017, *Commission* v *United Kingdom* (C-502/15, not published, EU:C:2017:334).

196 Ireland submits that the conclusions which the findings of the Environmental Protection Agency reach are definitive and directly applicable, as the amendments to the register of sensitive areas and to the discharge licences amount only to technical implementing arrangements. It refers for this purpose to the judgment of 6 October 2009, *Commission* v *Sweden* (C-438/07, EU:C:2009:613).

197 In case it should be of use, Ireland annexed to its defence the decisions amending the licences for the treatment plants of certain agglomerations, including that of Killarney, which were adopted between 29 June and 7 July 2017.

(b) Findings of the Court

(1) The relevant data for examining the third complaint so far as concerns the agglomerations of Ballincollig New, Cavan, Killarney, Longford, Navan, Nenagh and Roscrea

198 It is not disputed that the agglomerations of Ballincollig New, Cavan, Killarney, Longford, Navan, Nenagh and Roscrea have a p.e. of more than 10 000.

199 Also, it is common ground that the urban waste water of those agglomerations is discharged into areas that have been identified as sensitive pursuant to the criteria defined in Annex II to Directive 91/271.

200 Whilst initially the sensitive waters into which discharges are made from the treatment plants of the agglomerations of Cavan, Killarney, Longford, Navan, Nenagh and Roscrea were identified as such on account of their sensitivity both to nitrogen and to phosphorus, Ireland informed the Commission in its reply to the reasoned opinion that, in the light of new data, treatment for nitrogen reduction was no longer necessary.

201 As regards the area of discharge of waters treated by the system of the agglomeration of Ballincollig New, Ireland states that, under the conclusions of the letter of 8 November 2016, no evidence of eutrophication had been found and that all biological and nutrient conditions were below threshold levels between 2010 and 2015. That said, Ireland does not dispute the fact that that area is still designated as sensitive.

202 At the outset, it should be recalled 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 (judgment of 28 November 2018, *Commission* v *Slovenia*, C-506/17, not published, EU:C:2018:959, paragraph 50 and the case-law cited).

203 The data to which the parties refer come, first, from Ireland's reply to the additional letter of formal notice and, second, from its reply to the reasoned opinion. The letter of 8 November 2016 from the Environmental Protection Agency to the Irish Minister for Housing, Planning, Community and Local Government was annexed to Ireland's reply to the reasoned opinion. That letter in return refers to the review of sensitive areas which was carried out by the Environmental Protection Agency in 2016 on the basis of data collected between 2010 and 2015 ('the 2016 EPA Review'). That review forms Appendix 1 to the letter.

204 It is apparent from those data that in the case of the agglomerations of Killarney, Longford, Navan, Nenagh and Roscrea, Ireland did not carry out nitrogen reduction complying with Directive 91/271, although nitrogen is declared as a limiting nutrient for the sensitive areas into which the treatment plants of those agglomerations discharge the treated waters.

205 On the other hand, it is not apparent from those data that that is so in the case of the agglomeration of Cavan. Therefore, in the absence of additional data, it must be held that the Commission has not provided information allowing a determination that the complaint has been made out so far as concerns that agglomeration.

206 As regards the agglomeration of Ballincollig New, it is apparent from the 2016 EPA Review that no evidence of eutrophication had been found and that all biological and nutrient conditions were below threshold levels between 2010 and 2015. In Ireland's submission, it follows that there is no obligation to remove the nutrients and, therefore, no infringement of Article 5 of Directive 91/271.

207 However, irrespective of whether or not there is such an obligation, it is to be noted that, according to Ireland's reply to the additional letter of formal notice, in respect of 2013 to 2015 nutrients were removed pursuant to Article 5 of Directive 91/271, in terms of both phosphorus and nitrogen reduction. In the absence of additional data, it must be held that the Commission has not provided information allowing a determination that the complaint has been made out so far as concerns the agglomeration of Ballincollig New.

208 As regards the data which are derived from the assessments forwarded by the Environmental Protection Agency in its letter of 8 November 2016 annexed to Ireland's reply to the reasoned opinion, data upon which Ireland relies in order to assert that inadequate treatment of nitrogen, or of phosphorus and nitrogen, is no longer relevant for the purpose of establishing the treatment's compliance with Article 5 of Directive 91/271, it is to be noted that it is indicated on page 2 of the 2016 EPA Review that any change in the designation of a sensitive area will necessitate further analyses.

209 Ireland maintains, however, that such a necessity concerns only the areas that the 2016 EPA Review recommends be designated for the first time as sensitive.

210 In that regard, it must be stated, first, that the 2016 EPA Review specifies that the results collected so far as concerns, inter alia, the agglomeration of Longford require confirmation by further analyses, even though the discharge areas for that agglomeration's treatment plants were designated as sensitive before 8 November 2016.

211 Second, as the Environmental Protection Agency itself acknowledges in its letter of 8 November 2016, the findings and conclusions mentioned in the 2016 EPA Review are liable to have consequences for the designation of a sensitive area and for the discharge licences of the treatment plants concerned. Thus, in that letter, the Environmental Protection Agency states that the 2016 EPA Review will be followed by the adoption of recommendations and the amendment of statutory instruments. It is thus those amendments that enable compliance with the requirements of Table 2 of Annex I to Directive 91/271 to be prescribed.

212 In this respect, it should be noted that Article 12(2) of Directive 91/271 imposes on the Member States the obligation to ensure that the disposal of waste water from urban waste water treatment plants is subject to prior regulations and/or specific authorisation. Under Article 12(3), such instruments are to contain conditions to satisfy the requirements of section B of Annex I to the directive.

213 Whilst it is true that the findings and conclusions mentioned in the 2016 EPA Review concern not only amendments in the identification of the nutrients to be treated, but also the need to designate new sensitive areas, the fact remains that the identification of a nutrient responsible for the eutrophication of the waters of a discharge area is what determines its designation as a sensitive area.

214 Thus, the waters of an area may be sensitive to phosphorus or nitrogen, or to both those nutrients.

215 Therefore, Ireland cannot assert that, inasmuch as the 2016 EPA Review advocates only limiting the sensitivity to phosphorus of the areas into which the treatment plants of the agglomerations of Killarney, Longford, Navan, Nenagh and Roscrea discharge the treated waters, the amendments which stem therefrom consist only of technical arrangements.

216 In fact, it is to be noted that Ireland annexed to its defence the decisions amending the licences for the treatment plants of certain agglomerations covered by the third complaint, which were adopted between 29 June and 7 July 2017.

217 However, as the period set by the reasoned opinion expired on 30 November 2016, the Court cannot take account of such documents for the purpose of determining whether the failure to fulfil obligations that is alleged by the Commission has taken place.

218 It is therefore on the basis of the data put forward by the Commission that the Court should examine whether the discharges from the treatment plants of the agglomerations concerned are compliant.

(2) The agglomerations concerned

219 As is apparent from Ireland's reply to the additional letter of formal notice, the discharges from the treatment plants of the agglomerations of Killarney, Longford, Navan, Nenagh and Roscrea do not comply with the requirements of Table 2 of Annex I to Directive 91/271 so far as concerns the reduction of nitrogen.

220 For the reasons given in paragraphs 209 to 217 above, the data resulting from the letter of the Environmental Protection Agency of 8 November 2016 and from the 2016 EPA Review annexed thereto cannot be regarded as evidence capable of calling into question the data put forward by the Commission.

221 Therefore, it must be held that the treatment of urban waste water of the agglomerations of Killarney, Longford, Navan, Nenagh and Roscrea does not comply with Article 5 of Directive 91/271.

4. Application of exceptional circumstances and of the concept of 'best technical knowledge not entailing excessive costs'

222 In addition to the general context, as noted in paragraphs 112 to 114 above, in which the programme for upgrading urban waste water management was initiated, Ireland pleads, in individual instances, legal problems that have led to the treatment of urban waste water not complying with Article 5 of Directive 91/271.

223 Ireland states, furthermore, that the completion in the near future of the works concerning the systems for treating urban waste water of certain agglomerations covered by the third complaint should within the short term enable the facilities to be rendered compliant with Directive 91/271.

224 In the light of the considerations noted in paragraphs 118 to 121 above and the fact that Ireland has produced nothing capable of demonstrating that the costs of rendering compliant the facilities for treating urban waste water in the agglomerations covered by the third complaint are disproportionate, it must be concluded that the treatment of urban waste water in the agglomerations of Athlone, Cork

City, Dundalk, Enniscorthy apart from the townland of Killagoley, Fermoy, Killarney, Killybegs, Longford, Mallow, Midleton, Navan, Nenagh, Portarlington, Ringsend, Roscrea and Tralee does not comply with Article 5(2) and (3) of Directive 91/271, read in conjunction with Article 10 thereof and section B of Annex I thereto.

E. The fourth complaint

225 By its fourth complaint, the Commission submits that no prior regulations and/or specific authorisations are provided for relating to the discharges from waste water treatment plants, in accordance with Article 12(2) and (3) of Directive 91/271, as regards the agglomerations of Arklow and Castlebridge.

226 In the case of the agglomeration of Arklow, Ireland highlights the legal difficulties connected with establishing a treatment plant which have not allowed the necessary authorisation procedure to be initiated.

227 In the case of the agglomeration of Castlebridge, the waste water is stated to be conveyed to a larger agglomeration for which examination of a revised licence is underway.

228 In any event, Ireland submits that the exceptional circumstances that it has faced warrant dismissal of the fourth complaint.

229 Since Ireland does not dispute that, on the date on which the period set by the reasoned opinion expired, that is to say, 30 November 2016, the treatment plants of the agglomerations of Arklow and Castlebridge did not have valid discharge licences, it must be held that the treatment plants of those agglomerations do not comply with Article 12 of Directive 91/271.

230 Moreover, as Ireland failed to produce anything capable of demonstrating that the costs of rendering compliant the facilities for treating urban waste water in the agglomerations covered by the fourth complaint are disproportionate, it must be concluded that the systems for treating urban waste water of the agglomerations of Arklow and Castlebridge do not comply with Article 12 of Directive 91/271.

F. Conclusion

231 In the light of all the foregoing considerations, it must be held that Ireland has failed to fulfil its obligations:

- under Article 3(1) and (2) of Directive 91/271 and section A and footnote 1 of Annex I thereto by not ensuring that the waters collected in a combined urban waste water and rainwater system are retained and conducted for treatment in compliance with the requirements of that directive so far as concerns the agglomerations of Athlone, Cork City, Enniscorthy apart from the townland of Killagoley, Fermoy, Mallow, Midleton, Ringaskiddy and Roscommon Town;

- under Article 4(1) and/or (3) of Directive 91/271, read in conjunction with Article 10 thereof and section B of Annex I thereto, by not putting in place secondary or equivalent treatment so far as concerns the agglomerations of Arklow, Athlone, Ballybofey/Stranorlar, Cobh, Cork City, Enfield, Enniscorthy, Fermoy, Killybegs, Mallow, Midleton, Passage/Monkstown, Rathcormac, Ringaskiddy, Ringsend, Roscommon Town, Shannon Town, Tubbercurry and Youghal;

- under Article 5(2) and (3) of Directive 91/271, read in conjunction with Article 10 thereof and section B of Annex I thereto, by not ensuring that urban waste water entering collecting systems from the agglomerations of Athlone, Cork City, Dundalk, Enniscorthy apart from the townland of Killagoley, Fermoy, Killarney, Killybegs, Longford, Mallow, Midleton, Navan, Nenagh, Portarlington, Ringsend, Roscrea and Tralee be, before discharge into sensitive areas, made subject to treatment more stringent than that described in Article 4 of that directive and in accordance with the requirements of section B of Annex I thereto; and

- under Article 12 of Directive 91/271, by not ensuring that the disposal of waste water from urban waste water treatment plants of the agglomerations of Arklow and Castlebridge is subject to prior

regulations and/or specific authorisation.

232 The action is dismissed as to the remainder.

V. Costs

233 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 Ireland's failure to fulfil obligations has essentially been established, Ireland must be ordered to pay the costs.

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

1. Declares that Ireland has failed to fulfil its obligations:

– under Article 3(1) and (2) 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, and section A and footnote 1 of Annex I thereto by not ensuring that the waters collected in a combined urban waste water and rainwater system are retained and conducted for treatment in compliance with the requirements of that directive, as amended, so far as concerns the agglomerations of Athlone, Cork City, Enniscorthy apart from the townland of Killagoley, Fermoy, Mallow, Midleton, Ringaskiddy and Roscommon Town;

– under Article 4(1) and/or (3) of Directive 91/271 as amended by Regulation No 1137/2008, read in conjunction with Article 10 thereof and section B of Annex I thereto, by not putting in place secondary or equivalent treatment so far as concerns the agglomerations of Arklow, Athlone, Ballybofey/Stranorlar, Cobh, Cork City, Enfield, Enniscorthy, Fermoy, Killybegs, Mallow, Midleton, Passage/Monkstown, Rathcormac, Ringaskiddy, Ringsend, Roscommon Town, Shannon Town, Tubbercurry and Youghal;

– under Article 5(2) and (3) of Directive 91/271 as amended by Regulation No 1137/2008, read in conjunction with Article 10 thereof and section B of Annex I thereto, by not ensuring that urban waste water entering collecting systems from the agglomerations of Athlone, Cork City, Dundalk, Enniscorthy apart from the townland of Killagoley, Fermoy, Killarney, Killybegs, Longford, Mallow, Midleton, Navan, Nenagh, Portarlington, Ringsend, Roscrea and Tralee be, before discharge into sensitive areas, made subject to treatment more stringent than that described in Article 4 of that directive, as amended, and in accordance with the requirements of section B of Annex I thereto; and

– under Article 12 of Directive 91/271, as amended by Regulation No 1137/2008, by not ensuring that the disposal of waste water from urban waste water treatment plants of the agglomerations of Arklow and Castlebridge is subject to prior regulations and/or specific authorisation;

2. Dismisses the action as to the remainder;

3. Orders Ireland to pay the costs.

Lenaerts Biltgen Levits

Delivered in open court in Luxembourg on 28 March 2019.

A. Calot Escobar K. Lenaerts

Registrar President

---

* Language of the case: English.

JUDGMENT OF THE COURT (First Chamber)

18 October 2012 (*)

(Failure of a Member State to fulfil obligations — Pollution and nuisance — Urban waste water treatment — Directive 91/271/EEC — Articles 3, 4 and 10 — Annex I(A) and (B))

In Case C-301/10,

ACTION under Article 258 TFEU for failure to fulfil obligations, brought on 16 June 2010,

European Commission, represented by S. Pardo Quintillán, A.-A. Gilly and A. Demeneix, acting as Agents,

applicant,

v

United Kingdom of Great Britain and Northern Ireland, represented by L. Seeboruth, acting as Agent, D. Anderson QC, and S. Ford and B. McGurk, Barristers,

defendant,

THE COURT (First Chamber),

composed of A. Tizzano, acting as President of the First Chamber, A. Borg Barthet (Rapporteur), M. Ilešič, J.-J. Kasel and M. Berger, Judges,

Advocate General: P. Mengozzi,

Registrar: K. Sztranc-Sławiczek, Administrator,

having regard to the written procedure and further to the hearing on 10 November 2011,

after hearing the Opinion of the Advocate General at the sitting on 26 January 2012,

gives the following

Judgment

1 By its application, the European Commission requests the Court to declare that, by failing to ensure that appropriate collecting systems pursuant to Article 3(1) and (2) of, and Annex I(A) to, Council Directive 91/271/EEC of 21 May 1991 concerning urban waste water treatment (OJ 1991 L 135, p. 40) are in place in Whitburn and at Beckton and Crossness in London and that appropriate treatment is provided with regard to waste waters from the Beckton, Crossness and Mogden treatment plants in London pursuant to Article 4(1) and (3) and Article 10 of, and Annex I(B) to, Directive 91/271, the United Kingdom of Great Britain and Northern Ireland has failed to comply with its obligations under those provisions.

Legal context

2 According to Article 1 thereof, Directive 91/271 concerns the collection, treatment and discharge of urban waste water and the treatment and discharge of waste water from certain industrial sectors. Its objective is to protect the environment from the adverse effects of 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;

...'

4 Article 3 of Directive 91/271 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 ...

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

5 As set out in Article 4 of Directive 91/271:

'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.,

...

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.'

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 Annex I to Directive 91/271, entitled 'Requirements for urban waste water', provides in Section A, headed '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.'

8 Footnote 1 to Annex I(A) to Directive 91/271, placed at the heading 'Collecting systems', is worded as follows:

'Given that it is not possible in practice to construct collecting systems and treatment plants in a way such that all waste water can be treated during situations such as unusually heavy rainfall, Member States shall decide on measures to limit pollution from storm water overflows. Such measures could be based on dilution rates or capacity in relation to dry weather flow, or could specify a certain acceptable number of overflows per year.'

9 Annex I(B) to Directive 91/271, headed '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. The footnote to Annex I(A) to the directive, cited in the preceding paragraph, is reproduced in Annex I(B).

Pre-litigation procedure

10 The Commission received a complaint concerning the Whitburn Steel pumping station and other complaints regarding excessive storm water overflows in other parts of the United Kingdom.

11 On 3 April 2003 the Commission sent a letter of formal notice to the United Kingdom in which it stated that the Whitburn Steel pumping station failed to comply with the urban waste water collecting obligations imposed by Article 3(1) and (2) of, and Annex I(A) to, Directive 91/271.

12 In its reply of 3 June 2003, the United Kingdom stated that the agglomeration in question met the collecting obligations set out in Article 3 of Directive 91/271. However, it accepted that, following further investigations of the collecting system in the area, it was necessary to improve the pass forward flow in that system. Moreover, the United Kingdom explained that the discharge consent conditions under which the water company was operating the Whitburn Steel sewage pumping station had been changed, as a result of which fewer discharges were to be expected. Those improvements were expected to be completed by 31 March 2004 at the latest.

13 On 21 March 2005 the Commission sent a second letter of formal notice to the United Kingdom in which it stated that the urban waste water collecting and treatment systems in the London area failed to comply with the obligations on the collecting and treatment of urban waste water imposed by Article 3(1), Article 4(1) and (3) and Article 10 of, and Annex I(A) and (B) to, Directive 91/271. The Commission stated that untreated waste water was being discharged into the River Thames, even in moderate rainfall conditions, and that no immediate measure was foreseen to resolve that problem, which would therefore persist and even grow worse.

14 In its reply of 20 May 2005, the United Kingdom explained that the waste water collecting system for London was a combined system that collected and conveyed domestic and industrial waste water and run-off rainwater from a catchment of 557 km^2 for secondary treatment at the Beckton, Mogden, Crossness, Long Reach and Riverside treatment plants prior to discharge into the River Thames. However, it accepted that there were problems related to the volume, load and frequency of wet weather discharges resulting from overflows in announcing its decision to establish the Thames Tideway Strategic Study ('the TTSS') to assess the environmental impact of such discharges.

15 With regard to its obligations to provide adequate treatment of urban waste waters, the United Kingdom stated that, while improvements would be completed as soon as possible, the treatment plants serving the London agglomeration had been compliant with the requirements in Directive 91/271 since 31 December 2000. Also, the United Kingdom explained that the discharges of August 2004 occurred due to unusually heavy rainfall.

16 Since the Commission was not satisfied with the United Kingdom's response, by letter of 10 April 2006 it sent a reasoned opinion to the United Kingdom stating that, in its view, the United Kingdom had failed to fulfil its obligations under Article 3(1) and (2) of, and Annex I(A) to, Directive 91/271 in relation to Whitburn and its obligations under Article 3(1), Article 4(1) and (3) and Article 10 of, and Annex I(A) and (B) to, Directive 91/271 in relation to the nine treatment plants serving the Greater London area.

17 In reply to the reasoned opinion, the United Kingdom, by letter of 15 June 2006, stated that the whole collecting system and the treatment plants serving Whitburn and the metropolitan agglomeration of Sunderland were in compliance with Directive 91/271.

18 Following a meeting on 6 July 2007 between representatives of the Commission and of the United Kingdom, the latter provided clarification on that issue by letter of 23 October 2007.

19 In relation to the situation in London, the United Kingdom replied that, while improvements needed to be made to the treatment plants at Beckton, Crossness and Mogden, that did not mean that those treatment plants were in breach of Directive 91/271. The United Kingdom, in accepting the need for those improvements, was simply showing its desire to provide a higher level of environmental protection.

20 At a meeting on 26 January 2007, representatives of the Commission and the United Kingdom discussed the two possible options for London, which had been suggested by the TTTS report, and the United Kingdom decided to opt for the single 30 km tunnel along the length of the River Thames and the separate tunnel for its tributary, the River Lee. The whole project was to be completed by 2020.

21 Following two further letters of 29 June 2007 and 4 February 2008 sent by the United Kingdom, the Commission, which was still not satisfied with the replies provided by the United Kingdom, issued by letter of 1 December 2008 an additional reasoned opinion in which it clarified its interpretation of Directive 91/271 in relation to the obligations on Member States to control the release of urban waste waters through storm water overflows. It also confirmed its concerns in relation to the inadequacy of the collecting system put in place around Whitburn, of the collecting systems of Beckton and Crossness, and of the treatment plants at Mogden, Beckton and Crossness.

22 However, the Commission decided not to pursue the case further with regard to the collecting systems and the treatment plants in Beddington, Esher, Crawley, Deephams, Hogsmill, Long Reach and Riverside. The Commission thus called upon the United Kingdom to take the necessary measures to comply with the additional reasoned opinion within two months of receipt thereof.

Exchanges of correspondence and meetings between the Commission and the United Kingdom then ensued, but did not result in a solution.

24 Since the Commission was still not satisfied with the response provided by the United Kingdom, it decided to bring the present action.

The action

Arguments of the parties

25 The principal points of disagreement between the Commission and the United Kingdom concern the interpretation of Directive 91/271.

26 In the Commission's view, Member States are obliged to ensure that a collecting system is designed and built so as to collect all the urban waste water generated by the agglomeration it serves and that that waste water is conducted for treatment. The capacity of the collecting system must therefore be able to take into account natural climatic conditions (dry weather, wet weather, even stormy weather) as well as seasonal variations, such as non-residential populations, tourists and seasonal economic activities.

27 It submits that 'storm water overflows', referred to in Annex I(A) to Directive 91/271, are a part of urban waste water collecting systems and treatment facilities. The directive must be interpreted as providing for an absolute obligation to avoid spills from storm water overflows save for exceptional circumstances. That reasoning is reflected in footnote 1 to Annex I(A) to Directive 91/271 which provides that in practice it is not possible to collect and treat all waste waters 'during situations such as unusually heavy rainfall'.

28 The Commission puts forward factors such as the frequency and the volume of the overflows to show that there has been a failure to fulfil obligations under Directive 91/271. Contrary to what the United Kingdom fears, it does not propose a strict 20 spill rule but points out that, the more an overflow spills, particularly during periods when there is only moderate rainfall, the more likely it is that the overflow's operation is not in compliance with Directive 91/271.

29 The Commission and the United Kingdom also disagree in relation to the significance that must be attributed to the concept of 'best technical knowledge not entailing excessive costs' ('BTKNEEC') which is prescribed in Annex I(A) to Directive 91/271.

30 The Commission submits that that concept must be read in the context of Directive 91/271, of its aims and of its objectives, namely to protect the environment from the adverse effects of waste water discharges.

31 It submits that the concept of BTKNEEC allows Member States to choose between several solutions that promote compliance with both the provisions and the objective of Directive 91/271, such as building new or increased storage facilities or diverting rainwater before it can enter the collecting systems.

32 In the United Kingdom's view, Directive 91/271 must be interpreted as leaving it to Member States to determine the manner in which urban waste water should be collected and treated in order to realise the directive's objective, which is to protect the environment from the adverse effects of waste water discharges.

33 The United Kingdom considers that Directive 91/271 must be interpreted by reference in particular to the environmental impact of discharges on receiving waters.

34 So far as concerns the concept of 'unusually heavy rainfall', the United Kingdom considers that the fact that footnote 1 to Annex I(A) to Directive 91/271 expressly acknowledges that it will not be possible to avoid discharges in particular circumstances, notably when there is unusually heavy rainfall, does not impose an absolute obligation to avoid discharges in other circumstances. It considers that whether discharges are appropriate in other circumstances is to be determined by application of the concept of BTKNEEC and an assessment of the environmental impact of the discharges on receiving waters.

35 In the view of the United Kingdom, Directive 91/271 does not lay down requirements regarding the circumstances in which or the frequency with which discharges into receiving waters may occur. To evaluate whether collecting systems or treatment plants conform with Directive 91/271, a detailed assessment of the performance of the collecting system or the treatment plant concerned must be carried out by reference to the environmental impact of the discharges on receiving waters.

36 The concept of 'sufficient performance' provided for in Article 10 of Directive 91/271 must also be assessed in light of the objective of protection of the environment as set out in Article 1 of the directive and therefore by reference to the impact on receiving waters.

37 While the Commission does not take issue with the United Kingdom's methodology for calculating what constitutes a single spill event, that does not, in the United Kingdom's submission, resolve the problem linked to the fact that the definition of a spill event may differ from one Member State to another. There would therefore be no guarantee of consistency of approach across Member States if compliance with Directive 91/271 were to be determined by reference to the occurrence and frequency of spills.

38 The United Kingdom also submits that the Commission errs by basing the determination that collecting systems and treatment plants are compliant with Directive 91/271 on the volume of spills.

39 So far as concerns, more specifically, the agglomeration of Sunderland (Whitburn), the Commission complains that, at the date of the expiry of the deadline fixed in the additional reasoned opinion, excessive storm water overflows from the Whitburn leg of the Sunderland collecting system were still occurring and that that system was therefore not compliant with Article 3 of, and Annex I(A) to, Directive 91/271.

40 While the frequency of the spills has been reduced (in the years 2002 to 2004, between 56 and 91 spills per year and annual volumes of untreated urban waste water discharges of between 359 640 m^3 and 529 290 m^3), the collecting system is still not compliant with the requirements of Directive 91/271, particularly given the close vicinity of the bathing waters in Whitburn and Seaham and the numerous complaints received by the Commission concerning debris on the beaches around Whitburn.

41 The United Kingdom considers that those storm water overflows are compliant with Directive 91/271.

42 The United Kingdom also submits that the bathing waters around Whitburn have been found compliant with Council Directive 76/160/EEC of 8 December 1975 concerning the quality of bathing water (OJ 1975 L 31, p. 1) and that they are thus compliant with Directive 91/271. Furthermore, it is unlikely that the debris comes from Whitburn, but rather from the Tyne where the overflow channels were not equipped with screens until the end of March 2010.

43 As regards the agglomeration of London, the Commission alleges that the frequency and quantity of discharges of untreated waste water from the Beckton and Crossness collecting systems and the Beckton, Crossness and Mogden treatment plants are of such a magnitude as to constitute a breach of Articles 3 and 4 of, and Annex I(A) to, Directive 91/271, in particular given that those spills occur even during times of moderate rainfall.

44 Also, it submits that Article 10 of Directive 91/271 requires urban waste water treatment plants built to comply with the requirements of Article 4 of the directive to be designed, constructed, operated and maintained to ensure sufficient performance under all normal local climatic conditions.

45 The United Kingdom considers that those treatment plants satisfy the provisions of Directive 91/271.

46 It also notes that the London sewerage network is very old and has been progressively upgraded since 1875. Improvements have been examined and carried out since the adoption of Directive 91/271. Furthermore, the scale and exceptional nature of the works that are being carried out on the River Thames, at a cost of GBP 4.4 billion, mean that they require a lot of time. It submits that it cannot be penalised for implementing, in the long term, an ambitious solution.

Findings of the Court

Interpretation of Directive 91/271

47 As stated in the second paragraph of Article 1, the objective of Directive 91/271 is to protect the environment from the adverse effects of urban waste water discharges (see, inter alia, Case C-280/02 *Commission* v *France* [2004] ECR I-8573, paragraph 13).

48 The objective pursued by Directive 91/271 goes beyond the mere protection of aquatic ecosystems and seeks to conserve man, fauna, flora, soil, water, air and landscapes from any significant adverse effects of the accelerated growth of algae and higher forms of plant life that results from discharges of urban waste water (*Commission* v *France*, paragraph 16).

49 The concepts of 'sufficient performance' appearing in Article 10 of Directive 91/271, 'unusually heavy rainfall' mentioned in footnote 1 of Annex I to the directive and 'best technical knowledge not entailing excessive costs' (BTKNEEC) referred to in Annex I(A) to the directive should be interpreted in the light of that objective, but also of Article 191 TFEU.

50 First, the concept of 'sufficient performance', which concerns only treatment plants, does not have its scope defined numerically, as Article 10 of Directive 91/271 provides only that treatment plants must ensure 'sufficient performance under all normal local climatic conditions' and taking account of seasonal variations of the load when those plants are designed.

51 In this connection, the Court has already found a failure to fulfil obligations in cases where the collection or treatment rate for urban waste water amounted to 80% or even 90% of the existing load (judgments of 7 May 2009 in Case C-530/07 *Commission* v *Portugal*, paragraphs 28 and 53, and 14 April 2011 in Case C-343/10 *Commission* v *Spain*, paragraphs 56 and 62).

52 Indeed, given the objective pursued by Directive 91/271, recalled in paragraphs 47 and 48 of the present judgment, failure to treat urban waste water cannot be accepted under usual climatic and seasonal conditions, as otherwise Directive 91/271 would be rendered meaningless.

53 Thus, it is established that, in order to meet the objective of protecting the environment, the concept of 'sufficient performance', although not defined numerically, must be understood as meaning that, under usual climatic conditions and account being taken of seasonal variations, all urban waste water must be collected and treated.

54 Consequently, failure to treat urban waste water can be tolerated only where the circumstances are out of the ordinary, and it would run counter to Directive 91/271 if overflows of untreated urban waste water occurred regularly.

55 Second, the concept of 'unusually heavy rainfall' in footnote 1 of Annex I to Directive 91/271 applies to the collecting systems provided for in Article 3 of the directive and to the treatment plants provided for in Article 4.

56 By that footnote, the European Union legislature acknowledged that situations exist in which all the urban waste water will not be capable of being collected or treated. In particular, it stated that 'it is not possible in practice to construct collecting systems and treatment plants in a way such that all waste water can be treated' and it provided that failure to collect and treat waste water may be tolerated during 'situations such as unusually heavy rainfall'. However, in that case, Member States are to decide on 'measures to limit pollution from storm water overflows'.

57 It is clear that the term 'unusually heavy rainfall' is mentioned in footnote 1 of Annex I to Directive 91/271 by way of illustration only, since the term is preceded by the words 'during situations such as'. Thus, failure to collect or treat waste water may also be allowed in other circumstances.

58 However, contrary to the United Kingdom's assertions, the objective pursued by Directive 91/271 does not permit the inference that it is normal and common for those other circumstances to arise, in particular as the word 'unusually' clearly indicates that failure to collect or treat waste water cannot occur in normal circumstances.

59 The United Kingdom's line of argument seeking acceptance that discharges might take place even outside exceptional situations cannot therefore be upheld.

60 Furthermore, it should be pointed out that, where a Member State is faced with an exceptional situation not allowing it to collect or treat waste water, it remains obliged to adopt appropriate measures to limit pollution under footnote 1 of Annex I to Directive 91/271.

61 Also, since the concept of 'unusually heavy rainfall' is not defined by Directive 91/271, it is legitimate for the Commission, in carrying out its supervision of compliance with European Union law, to adopt guidelines and, as the Court does not have jurisdiction to define numerically obligations laid down by that directive, the concept of 'unusually heavy rainfall' must therefore be assessed in the light of all the criteria and conditions prescribed by the directive, in particular the concept of BTKNEEC.

62 Third, the concept of BTKNEEC, which is mentioned in Annex I(A) to Directive 91/271, must, like the other concepts referred to by Directive 91/271 that have already been elaborated upon, be examined

in the light of the objective of protecting the environment. Also, it is to be noted that the obligations of that directive which require the collection and treatment of all waste water, except in the case of exceptional or unforeseeable events, must be complied with at the date laid down by the directive.

63 Although the concept of BTKNEEC appears in Annex I(A) to Directive 91/271 only in relation to collecting systems, it nevertheless constitutes a concept inherent in all the provisions of Directive 91/271 designed to secure its objective of protecting the environment whilst avoiding too strict an application of the rules laid down. Thus, that concept is also to be extended to treatment plants in so far as in certain cases it allows discharges of untreated waste water even though the latter has adverse effects on the environment.

64 The concept of BTKNEEC thus enables compliance with the obligations of Directive 91/271 to be secured without imposing upon the Member States unachievable obligations which they might not be able to fulfil, or only at disproportionate cost.

65 However, in order not to undermine the principle set out in paragraph 53 of the present judgment that all waste water must be collected and treated, the Member States must invoke disproportionate costs of that kind by way of exception only.

66 In this connection, it should be borne in mind that, in accordance with settled case-law, a Member State may not plead practical or administrative difficulties in order to justify non-compliance with the obligations and time-limits laid down by a directive. The same holds true of financial difficulties, which it is for the Member States to overcome by adopting appropriate measures (judgment of 30 November 2006 in Case C-293/05 *Commission* v *Italy*, paragraph 35 and the case-law cited).

67 The concept of BTKNEEC must be examined by weighing the best technology and the costs envisaged against the benefits that a more effective water collection or treatment system may provide. Within this framework, the costs incurred cannot be disproportionate to the benefits obtained.

68 In that context, account will have to be taken, as the United Kingdom submits, of the effects of the discharges of untreated waste water on the environment and in particular on the receiving waters. The consequences that those discharges have for the environment would thus enable examination as to whether or not the costs that must be incurred to carry out the works necessary in order for all urban waste water to be treated are proportionate to the benefit that that would yield for the environment.

69 Should it prove impossible or very difficult to collect and treat all the waste water, it will be for the Member State concerned to demonstrate that the conditions for applying the concept of BTKNEEC are met.

70 It is true that the Court's case-law provides that in proceedings under Article 258 TFEU for failure to fulfil obligations it is for the Commission to prove the allegation that the obligation has not been fulfilled. It is therefore the Commission's responsibility to place before the Court the information needed to enable the Court to establish that the obligation has not been fulfilled, and in so doing the Commission may not rely on any presumptions (see, inter alia, Case C-494/01 *Commission* v *Ireland* [2005] ECR I-3331, paragraph 41; *Commission* v *Portugal*, paragraph 32; Case C-335/07 *Commission* v *Finland* [2009] ECR I-9459, paragraph 46; and the judgment of 10 December 2009 in Case C-390/07 *Commission* v *United Kingdom*, paragraph 43).

71 The Member States are nevertheless required, under Article 4(3) TEU, to facilitate the achievement of the Commission's tasks, which consist inter alia, pursuant to Article 17(1) TEU, in ensuring that the provisions of the FEU Treaty and the measures taken by the institutions pursuant thereto are applied. In particular, 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 the matter, is largely reliant on the information provided by any complainants and by the Member State concerned (see, inter alia, *Commission* v *Ireland*, paragraphs 42 and 43, and *Commission* v *United Kingdom*, paragraph 44).

72 It follows in particular that, where the Commission has adduced sufficient evidence of certain matters in the territory of the defendant Member State, it is incumbent on the latter to challenge in substance and in detail the information produced and the consequences flowing therefrom (see, inter alia, *Commission* v *Ireland*, paragraph 44 and the case-law cited, and *Commission* v *United Kingdom*, paragraph 45).

73 Accordingly, for the purpose of examining the present action, the Court must, first of all, examine whether the discharges from the collecting systems or the treatment plants of the various agglomerations in the United Kingdom are due to circumstances of an exceptional nature, and then, if that is not the case, establish whether the United Kingdom has been able to demonstrate that the conditions for applying the concept of BTKNEEC were met.

Whitburn

74 With regard to the obligation to have a collecting system as referred to in Article 3(1) of Directive 91/271, it should be recalled first of all, that, according to settled case-law, the question whether a Member State has failed to fulfil its obligations must be determined by reference to the situation prevailing in that Member State at the end of the period laid down in the reasoned opinion and the Court cannot take account of any subsequent changes (see, inter alia, *Commission* v *United Kingdom*, paragraph 50, and *Commission* v *Spain*, paragraph 54).

75 The additional reasoned opinion dated 1 December 2008 prescribed a period of two months from receipt thereof for the United Kingdom to comply with its obligations resulting from Directive 91/271. On the date set in the reasoned opinion, untreated urban waste water was still being discharged through storm water overflows. The number of discharges and their volume are not contested by the United Kingdom: it merely submits that, contrary to what is put forward by the Commission, the debris found on the beaches around Whitburn cannot come from the Whitburn collecting system given that the sea outfall used for the discharge of waste water is equipped with 6 mm screens, and the debris is probably from the Tyne where the overflows were not equipped with screens until the end of March 2010.

76 In order to establish whether, as the Commission submits in its complaint, the United Kingdom has failed to fulfil its obligations arising from Article 3 of, and Annex I(A) to, Directive 91/271, the examination set out in paragraph 73 of the present judgment should be carried out.

77 It must be stated, first, that, in accordance with the letter of 2 March 2005 sent by the United Kingdom to the Commission, the number of waste water discharges indicated for 2001 was 310 with an annual volume of 561 240 m^3 and that, during the period covering the years from 2002 to 2004, that number varied between 56 and 91 with volumes between 359 640 m^3 and 529 290 m^3. Also, it should be noted that, between 2006 and 2008, the number of waste water discharges per year varied between 25 and 47 with a volume from 248 130 m^3 to 732 150 m^3, while the volume for 2009 was 762 300 m^3. The Commission, basing its observations on the frequency of those discharges and their intensity, has clearly demonstrated that, both before and after the expiry of the period laid down by the additional reasoned opinion, they were a normal occurrence, as such a number of discharges cannot be linked to exceptional circumstances. Indeed, the United Kingdom does not contend in its observations that those discharges are exceptional in nature.

78 Second, it is to be noted that according to a study carried out in 2010 it would be possible, from a technological point of view, to reduce the number of waste water discharges from the Whitburn collecting system by enlarging the interceptor tunnel that already exists, a fact which has not been contested by the United Kingdom.

79 So far as concerns the costs required to be incurred and the benefits obtained, that study shows that an improvement of 0.3% in respect of the quality of the receiving waters could be achieved by the tunnel enlargement works, on the basis of 20 discharges per year.

80 Although the improvement in water quality appears marginal and, as the United Kingdom contends, Directive 76/160 is complied with, a fact which can be taken into account in the general examination of the conditions for applying the concept of BTKNEEC, it must be stated that the costs of such an

enlargement of the tunnel are not mentioned at any time, either in the observations of the parties or in the reports and studies carried out.

81 Thus, the Court is not in a position to examine whether the costs of such works are excessive and disproportionate to the environmental benefit obtained.

82 It follows that the United Kingdom has not demonstrated to the required legal standard that the costs of works to increase the capacity of the collecting system were disproportionate to the improvement in the state of the environment.

83 Accordingly, the Commission was right in finding that the collecting system put in place in Whitburn does not meet the obligations laid down in Article 3 of, and Annex I(A) to, Directive 91/271.

London

84 In the case of the agglomeration of London, it is not in dispute, in accordance with the contentions of the United Kingdom itself, that, at the end of the period laid down in the additional reasoned opinion, that agglomeration had neither treatment plants at Beckton, Crossness and Mogden performing the secondary treatment of all the urban waste water entering the collecting system, in accordance with Articles 4(1) and 10 of Directive 91/271, and guaranteeing that the discharges from them satisfied the requirements of Annex I(B) thereto nor collecting systems at Beckton and Crossness with a sufficient capacity, in accordance with Article 3 of the directive.

85 The Commission, relying on a TTSS report of February 2005, observes that there were approximately 60 waste water discharges from storm water overflows in London per year, even in periods of moderate rainfall; untreated water having a volume of several million tonnes was thus discharged into the River Thames every year.

86 So far as concerns the treatment plants of the collecting system for London, that report shows that their capacity is sufficient in dry weather, but not sufficient in the slightest in the case of rainfall.

87 The United Kingdom does not dispute the facts relied upon by the Commission and observes that a project is in fact underway for the construction of a new 30 km long tunnel under the tidal part of the River Thames to intercept collecting system overflow discharges and convey them for treatment at the Beckton treatment plant. Also, it is proposed to construct another tunnel, the Lee Tunnel, with the aim of reducing overflow discharges from the Beckton and Crossness collecting systems. Finally, improvement works are taking place to install extra capacity at the Beckton, Crossness and Mogden treatment plants.

88 In order to establish whether, as the Commission submits in its complaint, the United Kingdom has failed to fulfil its obligations arising from Articles 3, 4 and 10 of, and Annex I(A) to, Directive 91/271, the examination envisaged in paragraph 73 of the present judgment should again be carried out.

89 It must be stated that the Commission, in reliance upon the TTSS report mentioned in paragraph 85 of the present judgment, which is not disputed by the United Kingdom and which indicates that the frequency and volume of the discharges come about in the case not only of exceptional events but also of moderate rainfall, has demonstrated clearly the normality of the waste water discharges into the River Thames.

90 As regards whether it is technologically impossible to reduce the number of waste water discharges from the collecting system for London and whether the costs are disproportionate to the environmental benefit obtained, it is to be noted that the United Kingdom decided, in April 2007, to carry out the works proposed by the TTSS report of November 2005 consisting in particular in the construction of a new underground tunnel. Thus, technological solutions to the problem of the collecting system for London exist and their costs cannot be regarded as disproportionate given that the United Kingdom has already taken the decision to implement them.

91 So far as concerns the United Kingdom's argument that it cannot be found to have failed to fulfil its obligations given that projects designed to ensure compliance with Directive 91/271 were examined as

soon as the directive entered into force and the works decided upon are costly and achievable only over a number of years, it should be recalled that the question whether the defendant Member State has failed to fulfil its obligations must be determined by reference to the situation prevailing in that Member State at the end of the period laid down in the additional reasoned opinion and that a Member State cannot secure dismissal of the action merely because the activities and works which will, in future, cure the failure to fulfil obligations are underway. Unless a directive has been amended by the European Union legislature for the purpose of extending the periods prescribed for implementation, the Member States are required to comply with the periods originally laid down (see the judgment of 8 July 2004 in Case C-27/03 *Commission* v *Belgium*, paragraph 39).

92 It was therefore incumbent upon the United Kingdom to initiate in good time the procedures necessary for implementing Directive 91/271 in the national legal order, so that those procedures were completed within the time-limit prescribed in the first indent of Article 3(1) and the first indent of Article 4(1) of that directive, namely 31 December 2000.

93 Accordingly, the Commission was right in finding that the collecting system put in place in London (Beckton and Crossness) does not meet the obligations laid down in Article 3 of, and Annex I(A) to, Directive 91/271 and that, by failing to make urban waste water from the agglomeration of London (Beckton, Crossness and Mogden) subject to secondary treatment or an equivalent treatment, in accordance with Article 4 of that directive, the United Kingdom has failed to fulfil its obligations under the directive.

94 It follows from the foregoing that the failure on the part of the United Kingdom to fulfil its obligations that is alleged by the Commission has been established for each agglomeration referred to in the application.

95 Consequently, it must be held that, by failing to ensure:

– appropriate collection of the urban waste water of the agglomerations with a p.e. of more than 15 000 of Sunderland (Whitburn) and London (Beckton and Crossness collecting systems), in accordance with Article 3(1) and (2) of, and Annex I(A) to, Directive 91/271, and

– appropriate treatment of the urban waste water of the agglomeration with a p.e. of more than 15 000 of London (Beckton, Crossness and Mogden treatment plants), in accordance with Article 4(1) and (3) and Article 10 of, and Annex I(B) to, Directive 91/271,

the United Kingdom has failed to fulfil its obligations under that directive.

Costs

96 Under Article 69(2) 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 has been unsuccessful, the latter must be ordered to pay the costs.

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

1. Declares that, by failing to ensure:

– **appropriate collection of the urban waste water of the agglomerations, with a population equivalent of more than 15 000, of Sunderland (Whitburn) and London (Beckton and Crossness collecting systems), in accordance with Article 3(1) and (2) of, and Annex I(A) to, Council Directive 91/271/EEC of 21 May 1991 concerning urban waste water treatment, and**

– **appropriate treatment of the urban waste water of the agglomeration, with a population equivalent of more than 15 000, of London (Beckton, Crossness and**

Mogden treatment plants), in accordance with Article 4(1) and (3) and Article 10 of, and Annex I(B) to, Directive 91/271,

the United Kingdom has failed to fulfil its obligations under that directive;

2. Orders the United Kingdom to pay the costs.

[Signatures]

---

* Language of the case: English.

Provisional text

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,

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. colilevels 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. colilevels, 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

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

---

* Language of the case: English.