

OPINION OF ADVOCATE GENERAL
JACOBS

delivered on 11 December 2001¹

1. In this case, brought pursuant to Article 226 EC, the Commission alleges that the Italian Republic has infringed Council Directive 91/271/EEC of 21 May 1991 concerning urban waste water treatment.² The infringement alleged by the Commission concerns discharges of urban waste water of the city of Milan.

2. The objective of the Directive, according to Article 1, is to protect the environment from the adverse effects of waste water discharges.

3. Article 2(1) of the Directive defines 'urban waste water' as 'domestic waste water or the mixture of domestic waste water with industrial waste water and/or run-off rain water'.

4. Article 3(1), second subparagraph, provides that: '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.'³

5. Article 4 lays down general rules governing the urban waste water covered by the Directive.

6. Article 5 of the Directive provides as follows:

'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

1 — Original language: English.

2 — OJ 1991 L 135, p. 40.

3 — 1 p.e. (population equivalent) is defined in Article 2(6) as 'the organic biodegradable load having a five-day biochemical oxygen demand (BOD₅) of 60 g of oxygen per day'.

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. These requirements may be amended in accordance with the procedure laid down in Article 18.

4. Alternatively, requirements for individual plants set out in paragraphs 2 and 3 above need not apply in sensitive areas where it can be shown that the minimum percentage of reduction of the overall load entering all urban waste water treatment plants in that area is at least 75% for total phosphorus and at least 75% for total nitrogen.

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.

...

8. A Member State does not have to identify sensitive areas for the purpose of this Directive if it implements the treatment established under paragraphs 2, 3 and 4 over all its territory.'

7. By Decree 152 of 11 May 1999 the Italian Republic identified as sensitive areas, among others, the Po delta and the coastal areas of the north-west Adriatic from the mouth of the Adige to Pesaro and the water-courses which flow into them over a distance of 10 kilometres from the coast.

8. Before the adoption of that Decree by the Italian authorities, the Commission had asked the Italian Government for information on progress in the collection and treatment of urban waste water of Milan. In its reply the Italian Government referred to a project for the construction of three treatment plants covering 95% of the waste. The Commission concluded from that reply that the conurbation of Milan had no treatment plant for urban waste water, so that the waste from about 2 700 000 inhabitants flowed, without prior treatment, into the Lambro-Olona river system, a tributary of the River Po, which in turn flowed into the Adriatic in an area which was very polluted.

9. By letter dated 30 April 1999 the Commission formally gave notice of a possible infringement of Article 5(2) of the Direc-

tive consisting of the failure to subject the urban waste water of Milan to more stringent treatment than secondary treatment. The Italian authorities contested the allegation, *inter alia* on the ground that there was no obligation to subject the waste to a more stringent treatment since the water did not pass, or did not pass directly, to an area identified as sensitive by the Decree.

10. Finding that response unsatisfactory, the Commission delivered a reasoned opinion on 21 January 2000. In their reply to that opinion the Italian authorities maintained their position and announced that a declaration of a state of emergency had been requested which would make possible a simplified procedure for the construction of the three treatment plants envisaged for Milan.

11. In its application, lodged at the Court on 26 October 2000, the Commission contends that the Italian Republic has failed to fulfil its obligations under Article 5(2) of the Directive by not ensuring that by 31 December 1998 at the latest the discharges of urban waste water of the city of Milan, located within a basin flowing into the areas of the delta of the River Po and the north-west coast of the Adriatic Sea — areas defined by Decree 152 of the Italian Republic of 11 May 1999 as sensitive within the meaning of Article 5 of the Directive — were subjected to more stringent treatment than secondary treatment or

an equivalent treatment prescribed by Article 4 of the Directive.

12. In its defence the Italian Republic relies on a single argument, which is in essence that the urban waste water of Milan is not discharged directly into a sensitive area. According to the Italian Government, the fact that the waste water is discharged into the Lambro-Olona river complex, a tributary of the Po which in turn flows into the Adriatic in a very polluted area, is beside the point. The River Po itself has not been identified as a sensitive area for the whole of its length but only at its delta, more than 300 kilometres from Milan. None the less the Government points out that steps are being taken to advance the construction of the three treatment plants.

13. The Commission had anticipated the Italian Government's argument and contends in its application that the argument runs counter to the clear terms of the Directive. The argument assumes that, according to the Directive, it is legitimate to exclude from any treatment the waste from a large city such as Milan merely because the waste is not discharged directly into a sensitive area. According to the Commission, however, it is clear from Article 5(2) and (5) of the Directive that all waste water from agglomerations of more than 10 000 p.e. — therefore including Milan — which is discharged into a sensitive area had to be subject, no later than 31 December 1998, to a more stringent treatment.

14. In my opinion the Commission's contention is clearly right inasmuch as it can make no difference in my view whether the waste is discharged directly or indirectly into a sensitive area. Article 3(1), second subparagraph, refers to urban waste waters discharging into receiving waters which are considered sensitive areas, and Article 5(2) requires 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. Those provisions make no distinction between direct and indirect discharge. Moreover to introduce such a distinction would clearly defeat the objective of the Directive.

Conclusion

15. Accordingly the Court should in my opinion:

(1) declare that the Italian Republic has failed to fulfil its obligations under Article 5(2) of Council Directive 91/271/EEC of 21 May 1991 concerning urban waste water treatment by not ensuring that by 31 December 1998 at the latest the discharges of urban waste water of the city of Milan, located within a basin flowing into the areas of the delta of the River Po and the north-west coast of the Adriatic Sea — areas defined by Decree 152 of the Italian Republic of 11 May 1999 as sensitive within the meaning of Article 5 of the Directive — were subjected to more stringent treatment than secondary treatment or an equivalent treatment prescribed by Article 4 of the Directive;

(2) order the Italian Republic to pay the costs.