

## Failure to transpose directive on urban waste water treatment

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## ECJ Case Reports

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### European Court of Justice: Case Reports

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**Case C-302/95: Commission v Italy:  
Failure to fulfil obligations; failure to  
transpose Directive 91/271/EEC on  
Urban Waste Water Treatment; 12  
December 1996 (not yet reported)**

#### **Judgment**

By application lodged at the Court Registry on 25 September 1995, the Commission of the European Communities brought an action under Article 169 of the EC Treaty for a declaration that, by not adopting the laws, regulations and administrative provisions necessary to comply with Council Directive 91/271/EEC of 21 May 1991 concerning urban waste water treatment (OJ 1991 L 135/40) or, in any event, by not notifying the Commission thereof, the Italian Republic has failed to fulfil its obligations under that directive and under the EC Treaty.

Under Article 19(1) of the directive, the Member States were to bring into force the laws, regulations and administrative provisions necessary to comply with it no later than 30 June 1993 and immediately to inform the Commission thereof.

Since the Commission did not receive notification of the measures for transposing the directive into Italian law, and possessed no other information to support a conclusion that the Italian Republic had complied with its obligations, it gave Italy formal notice by letter of 9 August 1993 to submit its observations within two months. It was made clear in

that letter that even if the Italian Government considered the rules of domestic law already in force to be in conformity with the directive, it was still under a duty to communicate them to the Commission.

Since there was no reply to the letter of formal notice, the Commission sent the Italian Republic a reasoned opinion on 27 December 1994, in accordance with Article 169 of the EC Treaty, calling upon it to adopt the measures necessary to comply with its obligations under the directive within two months of notification.

Since the Italian Government failed to respond to the reasoned opinion, the Commission brought the present proceedings.

In its defence, the Italian Government contended that the matters covered by the directive were governed by Law No 319 of 10 May 1976 on the protection of water from pollution ("Law 319/76"), which already incorporated the main measures prescribed by the directive for the prevention of damage to the environment and, in particular, to water resources. The Italian Government pointed out that the provisions of Law 319/76 were implemented through rules adopted by the Regions, which have both legislative and administrative competence in matters concerning water.

The Italian Government admitted nevertheless that the rules of domestic law required amendment if the directive were to be fully transposed, particularly as regards the requirements laid down in its annexes. However, full transposition was expected to be brought about very shortly by the adoption of a legislative decree.

The Italian Government added that, pending definitive implementation of the directive, it had asked the Regions – by Decree Law No 79 of 17 March 1995 (GURI No 132 of 8 June 1995: "Decree Law 79/95") to comply with the principles and criteria laid down by the directive when enacting the rules implementing it with regard to the discharge of waste water from public drains, and the discharge from private installations of waste water which does not go into public drains. In those circumstances, the

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Italian Republic considered that it had, at least partially, fulfilled its obligation to transpose the directive, and undertook to ensure its transposition in full.

In its reply, the Commission argued that Law 319/76 and Decree Law 79/95 did not constitute measures transposing Directive 91/271. Law 319/76, as amended, merely laid down general rules concerning the discharge of waste waters, leaving the Regions and Provinces with the task of introducing supplementary legislation and giving effect to the criteria and general rules laid down by that Law. The Commission added that the regional rules implementing Law 319/76 had not been communicated to it and, consequently, it possessed no evidence that the Italian Republic had complied with the directive.

The Court noted that the Italian Republic had not denied that, when the period prescribed in Directive 91/271 expired, it had not adopted the laws, regulations and administrative provisions necessary to comply with that directive.

As regards the amendments made to Law 319/76 by Decree Law 79/95, providing that the Regions must comply with the principles and criteria laid down by the directive, the Italian Government acknowledged that full transposition required further measures to be adopted.

The Court pointed out that amendments made in 1995 could not in any case be taken into account in determining whether the Italian Republic has failed to fulfil its obligations: Decree Law 79/95 was adopted after the expiry of the two-month period set by the reasoned opinion which, according to the documents before the Court, was notified on 11 January 1995 at the latest.

According to established case-law, the question whether a Member State has failed to fulfil its obligations had to be determined by reference to the situation in the Member State as it stood at the end of the period laid down in the reasoned opinion, and the Court could not take account of any subsequent changes (see, in particular, Case C-289/94 *Commission v Italy* [1996] ECR I-000, paragraph 20).

It therefore had to be held that, by not adopting the laws, regulations and administrative provisions necessary to comply with Directive 91/271, the Italian Republic had failed to fulfil its obligations under Article 19 of that directive. On those grounds, the Court (Fifth Chamber):

Declared that, by not adopting the laws, regulations and administrative provisions necessary to comply with Council Directive 91/271/EEC of 21 May 1991 concerning urban waste water treatment, the Italian Republic had failed to fulfil its obligations under Article 19 of that Directive;

Ordered the Italian Republic to pay the costs.