Reports of Cases

JUDGMENT OF THE COURT (Sixth Chamber)

27 March 2025*

(Failure of a Member State to fulfil obligations – Urban waste-water treatment – Directive 91/271/EEC – Articles 4, 5 and 10 – Pollution of sensitive areas – Urban waste-water treatment plants – Judgment of the Court establishing a failure to fulfil obligations – Non-implementation – Article 260(2) TFEU – Financial penalties – Periodic penalty payment – Lump sum)

In Case C-515/23,

ACTION for failure to fulfil obligations under Article 260(2), TFEU, brought on 10 August 2023,

European Commission, represented by G. Gattinara and E. Sanfrutos Cano, acting as Agents,

applicant,

v

Italian Republic, represented by G. Palmieri, acting as Agent, and by M. Di Benedetto, M. Russo and F. Severi, avvocati dello Stato,

defendant,

THE COURT (Sixth Chamber),

composed of A. Kumin, President of the Chamber, F. Biltgen (Rapporteur), President of the First Chamber, and I. Ziemele, Judge,

Advocate General: T. Ćapeta,

Registrar: G. Chiapponi, Administrator,

having regard to the written procedure and further to the hearing on 13 November 2024,

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

gives the following

* Language of the case: Italian.

Judgment

1 By its action, the European Commission claims that the Court should:

– declare that, by failing to take all the measures necessary to comply with the judgment of 10 April 2014 in *Commission* v *Italy* (C-85/13, EU:C:2014:251; 'Case C-85/13'), the Italian Republic has failed to fulfil its obligations under Article 260(1) TFEU;

– order the Italian Republic to pay to the Commission a daily penalty payment in the amount of EUR 122 760, with any reduction calculated by the proposed reduction formula, for each day of delay in complying with the judgment in Case C-85/13, from the date of delivery of the judgment in the present case until the date of compliance with the judgment in Case C-85/13;

– order the Italian Republic to pay the Commission a daily lump sum of EUR 13 640, with any reduction calculated by the proposed reduction formula, for a minimum total amount of EUR 9 548 000, from the date of delivery of the judgment in Case C-85/13 until the date of delivery of the judgment in the present case or until the date of compliance with the judgment in Case C-85/13, where such date of compliance is earlier than the date of judgment of the present case; and

– order the Italian Republic to pay the costs.

Legal context

2 Article 1 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'), provides:

'This Directive concerns the collection, treatment and discharge of urban waste water and the treatment and discharge of waste water from certain industrial sectors.

The objective of the Directive is to protect the environment from the adverse effects of the abovementioned waste water discharges.'

3 According to Article 2 of that directive:

'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;

2. "domestic waste water" means waste water from residential settlements and services which originates predominantly from the human metabolism and from household activities;

…

4. "agglomeration" means an area where the population and/or economic activities are sufficiently concentrated for urban waste water to be collected and conducted to an urban waste water treatment plant or to a final discharge point;

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;

…

8. “secondary treatment” means treatment of urban waste water by a process generally involving biological treatment with a secondary settlement or other process in which the requirements established in Table 1 of Annex I are respected;

9. “appropriate treatment” means treatment of urban waste water by any process and/or disposal system which after discharge allows the receiving waters to meet the relevant quality objectives and the relevant provisions of this and other Community Directives;

…’

4 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). …’

5 Article 4 of that directive is worded as follows:

‘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. …

…’

6 Article 5(1) to (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 Annex I B. …

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.

…’

7 Under Article 10 of that directive:

‘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.’

8 Annex I to that directive, entitled ‘Requirements for urban waste water’, is worded as follows:

‘A. 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.

B. Discharge from urban waste water treatment plants to receiving waters

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.

4. More stringent requirements than those shown in Table 1 and/or Table 2 shall be applied where required to ensure that the receiving waters satisfy any other relevant Directives.

5. The points of discharge of urban waste water shall be chosen, as far as possible, so as to minimize the effects on receiving waters.

…'

The judgment in Case C-85/13

9 By its judgment in Case C-85/13, the Court held that, by failing to adopt the measures necessary to ensure that:

– the agglomerations of Melegnano, Mortara, Olona Nord, Olona Sud, Robecco sul Naviglio, San Giuliano Milanese Est, Trezzano sul Naviglio and Vigevano (Lombardy), with a p.e. of more than 10 000 and which discharge urban waste water into receiving waters considered 'sensitive areas' within the meaning of Article 5(1) of Directive 91/271, are provided with collecting systems for urban waste water, in accordance with Article 3 of that directive;

– in the agglomerations of Pescasseroli (Abruzzo), Cormons, Gradisca d'Isonzo, Grado (Friuli-Venezia Giulia), Broni, Calco, Casteggio, Melegnano, Mortara, Orzinuovi, Rozzano, Trezzano sul Naviglio, Valle San Martino, Vigevano (Lombardy), Pesaro, Urbino (Marche), Alta Val Susa (Piedmont), Nuoro (Sardinia), Castellammare del Golfo I, Cinisi, Terrasini (Sicily), Courmayeur (Aosta Valley) and Thiene (Veneto), with a p.e. of more than 10 000, urban waste water entering collecting systems is, before discharge, subject to secondary treatment or an equivalent treatment, in accordance with Article 4 of Directive 91/271;

– in the agglomerations of Pescasseroli (Abruzzo), Aviano Capoluogo, Cividale del Friuli, Codroipo/Sedegliano/Flaibano, Cormons, Gradisca d'Isonzo, Grado, Latisana Capoluogo, Pordenone/Porcia/Roveredo/Cordenons, Sacile, Udine (Friuli-Venezia Giulia), Frosinone (Lazio), Francavilla Fontana, Trinitapoli (Puglia), Dorgali, Nuoro, ZIR Villacidro (Sardinia), Castellammare del Golfo I, Cinisi, Partinico, Terrasini and Trappeto (Sicily), with a p.e. of more than 10 000 and which discharge into receiving waters considered 'sensitive areas' within the meaning of Directive 91/271, urban waste water entering collecting systems is, before

discharge, subject to more stringent treatment than secondary treatment or an equivalent treatment, in accordance with Article 5 of that directive, and

– the urban waste water treatment plants built to comply with the requirements of Articles 4 to 7 of Directive 91/271, are designed, constructed, operated and maintained to ensure sufficient performance under all normal local climatic conditions and to ensure that the urban waste water treatment plants are designed in such a way as to take account of seasonal variations of the load in the agglomerations of Pescasseroli (Abruzzo), Aviano Capoluogo, Cividale del Friuli, Codroipo/Sedegliano/Flaibano, Cormons, Gradisca d'Isonzo, Grado, Latisana Capoluogo, Pordenone/Porcia/Roveredo/Cordenons, Sacile, Udine (Friuli-Venezia Giulia), Frosinone (Lazio), Broni, Calco, Casteggio, Melegnano, Mortara, Orzinuovi, Rozzano, Trezzano sul Naviglio, Valle San Martino, Vigevano (Lombardy), Pesaro, Urbino (Marche), Alta Val Susa (Piedmont), Francavilla Fontana, Trinitapoli (Puglia), Dorgali, Nuoro, ZIR Villacidro (Sardinia), Castellammare del Golfo I, Cinisi, Partinico, Terrasini, Trappeto (Sicily), Courmayeur (Aosta Valley) and Thiene (Veneto),

the Italian Republic has failed to fulfil its obligations under Article 3 and/or Article 4 and/or Article 5 and Article 10 of Directive 91/271.

Pre-litigation procedure and procedure before the Court

10 In order to monitor compliance with the judgment in Case C-85/13, the Commission asked the Italian Republic, by letter of 12 May 2014, for information on the measures taken to that effect. On 15 January and 15 October 2015, and on 31 January 2017, the Commission invited the Italian Republic to provide updated information on the progress made in bringing the agglomerations referred to in that judgment into compliance with it, and submitted its own assessment of the situation of the agglomerations declared to be compliant by the Italian authorities.

11 By letters of 15 and 25 July 2014, 20 February, 19 March, 22 September and 23 November 2015, 2 March, 23 September and 30 September 2016, 12 January, 27 February, 24 May and 27 July 2017, and 18 January 2018, the Italian Republic provided the Commission with information on the measures adopted and their implementation.

12 Taking the view that the Italian Republic had only partially complied with the judgment in Case C-85/13, the Commission sent it, on 18 May 2018, a letter of formal notice under Article 260(2) TFEU, concerning 14 of the agglomerations referred to in that judgment which still did not meet the requirements of Directive 91/271, and invited that Member State to submit its observations within two months of receipt of that letter.

13 By letter of 12 July 2018, the Italian Republic replied to the letter of formal notice. Subsequently, that Member State sent the Commission a number of communications and notes containing, inter alia, six-monthly updates of the state of compliance with the judgment in Case C-85/13.

14 Taking the view, in the light of the information provided, that the Italian Republic had still not fully complied with the judgment in Case C-85/13, given the persistent non-compliance with that judgment by five agglomerations referred to therein, namely Castellammare del Golf I, Cinisi, Terrasini, Trappeto (Sicily) and Courmayeur (Aosta Valley), 9 years after the delivery of that judgment and more than 20 years after the expiry of the time limits for compliance laid down in Articles 4 and 5 of Directive 91/271, the Commission decided to bring the present action.

The action

Failure to fulfil obligations

Arguments of the parties

15 The Commission criticises the Italian Republic for not having taken all the measures necessary to comply with the judgment in Case C-85/13, since, on the expiry of the time limit prescribed in the letter of formal notice, namely 18 July 2018, but also on 30 June 2023, the date of the last update of the state of compliance with that judgment which that Member State sent to the Commission, in the five agglomerations covered by the present action, namely Castellammare del Golfo I, Cinisi, Terrasini, Trappeto (Sicily) and Courmayeur (Aosta Valley), with a p.e. of more than 10 000, the obligations arising from Articles 4, 5 and 10 of Directive 91/271 had not yet been complied with.

16 The Commission submits, in the first place, that it is apparent from the assessment of the replies provided by the Italian Republic to the letter of formal notice, that that Member State had still not taken, on the relevant date for the purposes of the present proceedings, namely 18 July 2018, all the measures necessary to ensure that, in four of the five agglomerations referred to in that action, namely Castellammare del Golfo I, Cinisi, Terrasini and Courmayeur, with a p.e. of more than 10 000, urban waste water entering collecting systems is, before discharge, subject to secondary treatment or equivalent treatment, in accordance with Article 4 of Directive 91/271. Moreover, the Italian authorities admitted the continuing infringement of that article during the pre-litigation procedure.

17 The Commission submits, in the second place, in the light of the replies given by the Italian Republic to the letter of formal notice, that that Member State had still not taken, on the date referred to in the preceding paragraph, all the measures necessary to ensure that, in four of the five agglomerations referred to in the present action, namely Castellammare del Golfo I, Cinisi, Terrasini and Trappeto, with a p.e. of more than 10 000 and which discharge into receiving waters classified as 'sensitive areas', urban waste water entering collecting systems must, before discharge, be subject to more stringent treatment than secondary treatment or equivalent, in accordance with Article 5 of Directive 91/271.

18 As regards, more specifically, the Trappeto agglomeration, the Commission states that it is apparent from the replies of the Italian Republic to the letter of formal notice and from the updates submitted by that Member State on the state of compliance with the judgment in Case C-85/13 that the situation of that agglomeration was, on the relevant date for the purposes of the present proceedings, namely 18 July 2018, still not compatible with Article 5 of Directive 91/271, which the Italian authorities also admitted to in the last update communicated on 30 June 2023.

19 The Commission observes, in that context, that the Italian authorities declared, in the pre-litigation procedure relating to the present case, a load of 7 783 p.e. generated by the Trappeto agglomeration, lower than that which they had previously declared in their reply to the reasoned opinion under Article 258 TFEU and which the Court upheld in the judgment in Case C-85/13. However, they did not provide a clear and precise statement of reasons, supported by specific evidence demonstrating the reduction of the load. In that regard, the data produced by the Italian Republic annexed to its defence statement in support of the existence of a load of 8 910 p.e. generated by that agglomeration cannot compensate for the lack of evidence for the past, but could only take effect from the date on which they were produced, namely 18 October 2023.

20 In addition, since the waste water from the Trappeto agglomeration is discharged into a sensitive area with a significant scale of tourism and there is doubt as to the interpretation of the data provided by the Italian authorities, the Commission proposes that preference be given to a reading of that data to the effect that that agglomeration remains subject to the obligations arising from Article 5 of Directive 91/271. Such a reading is the only one consistent with the objective of that directive, which is to protect the environment from the adverse effects of waste water discharges.

21 The Commission recalls, in the third place, that an infringement of Articles 4 or 5 of Directive 91/271 necessarily entails an infringement of Article 10 of that directive (see, to that effect, judgment of 6 October 2021, *Commission* v *Italy (System for collecting and treating urban waste water)*, C-668/19, EU:C:2021:815, paragraphs 94 to 96). In the light of the replies provided by the Italian Republic to the letter of formal notice and in view of the continuing infringement, by that Member State, of its obligations under Articles 4 and 5 of that directive, it must be held that that Member State had still not taken, on the relevant date for the purposes of the present proceedings, namely 18 July 2018, all the measures necessary to ensure that, in the five agglomerations referred to in the present action, namely Castellammare del Golfo I, Cinisi, Terrasini, Trappeto and Courmayeur, the urban waste water treatment plants constructed to meet the requirements of Articles 4 to 7 of that directive were designed, constructed, operated and maintained to ensure sufficient performance under the normal local climatic conditions and so that the treatment plants were designed to take account of seasonal variations of the load, as required by Article 10 of that directive.

22 The Commission concludes that the Italian Republic has not fully complied with the judgment in Case C-85/13 and has therefore failed to fulfil its obligations under Article 260(2) TFEU.

23 The Italian Republic, without disputing the factual situation described in the Commission's application, refers, first, to the measures necessary to bring the agglomerations of Castellammare del Golfo I, Cinisi and Terrasini into line with the obligations arising from Articles 4, 5 and 10 of Directive 91/271. Those measures consist, first, in equipping the Castellammare del Golfo I agglomeration with a new underground treatment plant and, second, in adapting and strengthening the joint treatment plant at Contrada Ciachea in Carini for the purposes of treating the waste water of the agglomerations of Cinisi and Terrasini. The timetable for completion of the measures necessary for that purpose, set out in the defence statement, provides for the situation of the Castellammare del Golfo I agglomeration to be brought into line with that directive in July 2027 and for the situation of the agglomerations of Cinisi and Terrasini agglomerations in March 2027.

24 As regards, in the second place, the Trappeto agglomeration, the Italian Republic contends that the complaint alleging infringement of Article 5 of Directive 91/271, on account of variations in the load occurring after the date of delivery of the judgment in Case C-85/13, is inadmissible.

25 The Italian Republic observes, in that regard, that the judgment in Case C-85/13 and the letter of formal notice of 18 May 2018 concerned only agglomerations with a p.e. of more than 10 000, and therefore that the present dispute is also limited to those agglomerations. Although, in the context of proceedings for a declaration of failure to fulfil obligations under Article 258 TFEU, the Italian authorities notified the Commission of a load generated of more than 10 000 p.e. for the Trappeto agglomeration, the report of the Assemblea Territoriale Idrica (Territorial Assembly for Water, Italy), annexed to the defence statement, assumes a load generated of 8 910 p.e. for that agglomeration, calculated in accordance with a method consisting in excluding the input of 'scat-

tered' houses and 'isolated clusters' from the calculation of the load generated by that agglomeration. It follows that the same agglomeration, with an actual load generated of less than 10 000 p.e., is no longer subject to the obligations arising from Directive 91/271 which were infringed by the alleged failure to fulfil obligations.

26 The Italian Republic adds that the works designed to equip the Trappeto agglomeration with a waste water treatment plant capable of ensuring compliance with the emission limit values laid down in Articles 4 and 5 of Directive 91/271 were completed and that the static and technical-functional tests were being carried out on the date on which its defence statement was lodged. The Italian Republic attaches to that defence statement six-monthly sampling analyses carried out between April and September 2023 as evidence of the proper functioning of that treatment plant.

27 As regards, in the third place, the Courmayeur agglomeration, the Italian Republic states that it should be deemed 'from a physical point of view' to comply with the obligations arising from Articles 4 and 10 of Directive 91/271 by 31 December 2023 at the latest. In addition, that Member State refers to the data which it had already disclosed to the Commission on 31 July 2020 in the context of the pre-litigation procedure and to the new data contained in its defence statement in order to demonstrate that the failure to comply with the obligations arising from Article 4 of that directive relates not to the entire load generated by that agglomeration, namely 60 000 p.e., but only to 37 200 p.e., since the remaining 22 800 p.e. is already properly treated by the La Salle treatment plant, a municipality forming part of the Courmayeur agglomeration. That Member State adds that, at the end of the works for the construction of sections of sewer intended for the conduct of waste water discharged by the municipality of Courmayeur into the La Salle treatment plant, it will still have to send the Commission the certificates certifying the completion of the works and the analysis of the discharges, with a view to demonstrating the proper functioning of that plant.

28 The Commission submits, in its reply, as regards the Courmayeur agglomeration, that, first, the data provided by the Italian Republic in its defence are not sufficiently reliable given the margin of error they present, second, those data cannot influence the reduction formula proposed for the calculation of the daily penalty payment, since it is the compliance of the agglomeration as a whole that is relevant for that purpose and, third, the Italian authorities themselves acknowledge that the data are variable and not definitive.

29 The Italian Republic states, in its rejoinder, that new measures were adopted to speed up implementation of the judgment in Case C-85/13. That Member State refers, in that regard, to Decree-Law No 181 of 9 December 2023, converted by Law No 11 of 2 February 2024 (GURI No 31 of 7 February 2024), which supplements the powers of the single administrator, responsible for that compliance, for the implementation of measures relating to urban waste water. The provisions thus adopted provide a precise answer to the main obstacles encountered by the single administrator, which slowed down the implementation of those interventions.

30 That Member State provides, moreover, additional information relating to the planned development of the situation of the five agglomerations referred to in the Commission's action.

31 First, in order to encourage and speed up the design and implementation of the actions necessary to comply with the judgment in Case C-85/13, the single administrator applied acceleration measures for public contracts not yet awarded, which should make it possible, on the one hand,

to bring Castellammare del Golfo I in line with Directive 91/271 in December 2026 and, on the other, to bring forward by approximately six months the completion of the planned works for Cinisi and Terrasini.

32 Second, as regards the Trappeto agglomeration, the works to adapt and strengthen the waste water treatment plant carried out to remedy the infringement of EU law were completed and the management of the treatment plant was handed over, on 22 December 2023, to AMAP SpA, the manager of the integrated water service of the Ambito Territoriale Ottimale (ATO) di Palermo (Optimum territorial zone of Palermo, Italy). In its rejoinder, the Italian Republic submits the results of the test reports carried out at the Trappeto treatment plant during the period between 23 June and 15 December 2023, from which it is apparent that that treatment plant now ensures compliance with the emission limits laid down by Directive 91/271 for the discharge of urban waste water into receiving waters considered sensitive areas.

33 Third, as regards the Courmayer agglomeration, collection and connection work for that agglomeration was finished in December 2023, making it possible to complete the collecting system for that agglomeration. According to the analyses carried out in January 2024, attached to the rejoinder, that agglomeration's treatment plant, which now receives all its waste water, proved to be effective in the treatment of water from the latest connected pipes and complied with the emission limits laid down by Directive 91/271 for the discharge of urban waste water into sensitive areas. Consequently, the Courmayeur agglomeration complies with that directive, not only from a physical point of view, with the completion and connection of the collecting systems to the La Salle treatment plant, but also from the point of view of the functional nature and effectiveness of the treatment. Therefore, that agglomeration should be excluded from the subject matter of the action.

Findings of the Court

34 Under Article 260(2) TFEU, if the Commission takes the view that the Member State concerned has not taken the measures necessary to comply with a judgment of the Court, it may bring the case before the Court after giving that Member State the opportunity to submit its observations, specifying the amount of the lump sum or penalty payment to be paid by that Member State which it considers appropriate in the circumstances.

35 In the present case, in order to determine whether the Italian Republic has adopted all the measures necessary to comply with the judgment in Case C-85/13, it is necessary to ascertain whether that Member State has fully complied with Articles 4 and/or 5, and Article 10 of Directive 91/271.

36 Furthermore, as regards infringement proceedings under Article 260(2) TFEU, the reference date for assessing whether there has been such a failure is the date of expiry of the period prescribed in the letter of formal notice issued under that provision (see, to that effect, judgment of 13 June 2024, *Commission* v *Hungary (Reception of applicants for international protection II)*, C-123/22, EU:C:2024:493, paragraph 56 and the case-law cited).

37 In the present case, since the Commission sent the letter of formal notice on 18 May 2018, the reference date for assessing the existence of the failure to fulfil obligations referred to in the preceding paragraph of the present judgment is the date of expiry of the time limit prescribed in that letter, namely 18 July 2018.

38 As regards, in the first place, the agglomerations of Castellammare del Golfo I, Cinisi and Terrasini, the Italian Republic acknowledges the continued failure to fulfil obligations in respect of Articles 4, 5 and 10 of Directive 91/271. Thus, in its replies to the letter of formal notice and in its pleadings before the Court, that Member State stated that the infrastructure works necessary to equip those agglomerations with urban waste water collection and treatment systems complying with the obligations arising from those articles had yet to be carried out on 18 July 2018. According to the latest information submitted by that Member State in its rejoinder, those three agglomerations should become compliant before the end of 2026.

39 As regards, in the second place, the Trappeto agglomeration, the Italian Republic's argument relating to the inadmissibility of the complaint alleging continued failure to fulfil obligations in respect of the infringement of Article 5 of Directive 91/271, on the ground that a load of less than 10 000 p.e. should have been used for that agglomeration, which relieved it of the obligation to comply with the requirements laid down in that article, cannot be accepted.

40 To allow a Member State, in the context of the procedure laid down in Article 260(2) TFEU, to plead, for the first time before the Court, a change in the method of calculating the load generated by an agglomeration covered in the judgment which found the failure to fulfil obligations compared to that underlying the findings of the Court in that judgment, would risk undermining the definitive nature of that judgment, which has the force of *res judicata*.

41 Even if such an argument were accepted, the new evidence relied on by the Italian Republic does not demonstrate, either on 18 July 2018 or at a later date, that the load generated by the Trappeto agglomeration is less than 10 000 p.e. and, therefore, that that agglomeration would be exempt from the obligation to comply with the requirements laid down in Article 5 of Directive 91/271.

42 First, the load of 7 783 p.e. communicated by the Italian authorities to the Commission during the pre-litigation procedure was not substantiated, which the Italian Republic acknowledges in its written pleadings. Second, that Member State referred in its defence statement to a load of 8 910 p.e. generated by the Trappeto agglomeration, resulting from a report by the Territorial Assembly for Water and a map attached thereto. However, that new information was communicated by that Member State only when it lodged its defence statement, on 23 October 2023, and therefore after the relevant date for the purposes of assessing the existence of the alleged failure to fulfil obligations, namely 18 July 2018. Furthermore, that report is not dated and does not specify the date from which the reduction in the load generated by that agglomeration occurred. Moreover, that report refers to a load generated by the Trappeto agglomeration which at times is of 8 618 p.e. and at others of 11 816 p.e. In that regard, the Commission maintained, without being contradicted by the Italian Republic, that, if the change in the calculation method relied on by the Italian Republic were not taken into account, the load generated by that agglomeration would, according to the data provided by the Italian authorities, amount to 11 816 p.e.

43 Moreover, it is apparent from the Italian Republic's written pleadings that that change in the method of calculating the load generated by that agglomeration consists of excluding from that calculation the contribution of scattered houses and isolated clusters, where a floating population is concentrated. That Member State has not provided any explanation as to the reasons justifying that change in the method of calculating the load generated by an agglomeration such as Trappeto, which is located in a tourist region where scattered houses and isolated clusters are likely to have a significant ecological impact.

44 As to the remainder, the Italian Republic has neither alleged nor, a fortiori, demonstrated that it had remedied, at the end of the time limit prescribed in the letter of formal notice, namely 18 July 2018, the infringements of the obligations under Articles 5 and 10 of Directive 91/271 established in the operative part of the judgment in Case C-85/13 concerning the Trappeto agglomeration. In that regard, it is apparent from that Member State's defence statement that the static and technical and functional tests carried out following the infrastructure works completed at the Trappeto treatment plant were still ongoing on the date on which the defence statement was lodged, namely 23 October 2023. It is also apparent from the rejoinder and the annexes thereto that the works to adapt and strengthen that treatment plant intended to remedy infringements of EU law were completed only in December 2023. It should be added that the test reports attached to that statement attesting that the discharges from that treatment plant complied with the emission limits laid down in Article 5 of that directive were carried out between 23 June and 15 December 2023. Therefore, the evidence relating to the completion of those works and the test reports relating to that treatment plant post-date the relevant date for the purposes of assessing the existence of the alleged failure to fulfil obligations, namely 18 July 2018, with the result that they cannot be taken into account for that purpose.

45 It follows that the Italian Republic has not established that the situation of the Trappeto agglomeration complied with the obligations arising from Articles 5 and 10 of Directive 91/271 on the date of expiry of the period indicated in the letter of formal notice.

46 As regards, in the third place, the Courmayeur agglomeration, the Italian Republic acknowledges in its defence statement that the situation of that agglomeration still did not comply with the obligations arising from Articles 4 and 10 of Directive 91/271. In that regard, it is apparent from that Member State's reply to the letter of formal notice of 10 July 2018 and from its written pleadings before the Court that, although the waste water of four municipalities in that agglomeration, namely La Salle, Morgex, Pré-Saint Didier and Thuile, had already been treated in the new treatment plant of the municipality of La Salle, the collection works to connect Courmayeur, that is to say, the fifth municipality of the agglomeration, to that treatment plant were still in progress and were to be completed by 31 December 2023 at the latest. In addition, the certificates certifying the completion of the works and the analysis of the discharges, with a view to demonstrating the proper functioning of that plant, had not yet been provided to the Commission. It follows that the Italian Republic has not established that the situation of that agglomeration complied with the obligations arising from Articles 4 and 10 of Directive 91/271 at the end of the time limit prescribed in the letter of formal notice, namely 18 July 2018.

47 Moreover, the Italian Republic's argument that the non-compliance relates to only part of the total load generated by the Courmayeur agglomeration, namely 37 200 p.e. out of a total of 60 000 p.e. for that agglomeration, cannot succeed. That argument merely confirms that the treatment of all the urban waste water from that agglomeration was not ensured, on the relevant date, in breach of the obligations arising from Articles 4 and 10 of Directive 91/271.

48 In the light of all of the foregoing, it must be held that, by failing to take all the measures necessary to ensure compliance with the judgment in Case C-85/13, the Italian Republic has failed to fulfil its obligations under Article 260(1) TFEU.

Financial penalties

Arguments of the parties

49 Given that the Italian Republic has not taken all the measures required to comply with the judgment in Case C-85/13, the Commission proposes, on the basis of Article 260(2) TFEU, that a periodic penalty payment and a lump sum be imposed on that Member State.

50 With a view to determining the amounts of those financial penalties, it relies on Communication 2023/C 2/01 from the Commission, entitled 'Financial sanctions in infringement proceedings' (OJ 2023 C 2, p. 1; 'the 2023 Communication'). In particular, that institution states that those penalties must be determined on the basis of the following fundamental criteria: the seriousness of the infringement, its duration and the need to ensure that the financial sanction has a deterrent effect in order to prevent repeat infringements.

51 In the first place, in terms of the seriousness of the infringement, the Commission proposes fixing the coefficient for seriousness at 4, on a scale of 1 to 20, taking into account, on the one hand, the importance of the rules of EU law that were infringed and, on the other hand, the consequences of that infringement on general and individual interests.

52 As regards the importance of those rules, the Commission states that Directive 91/271 seeks to protect the environment from the adverse effects of urban waste water and water discharged by certain industrial sectors, and lays down the requirements for the collection and treatment of waste water according to the size of the agglomerations concerned. The requirements of that directive are more stringent where waste water is discharged into areas classified as 'sensitive', within the meaning of Article 5(1) of that directive, on the basis of the criteria set out in Annex II thereto.

53 The Commission states that the present case concerns infringement of the treatment obligations laid down in Directive 91/271 and, in particular, of Articles 4 and 5 thereof, non-compliance with which has particularly harmful effects in agglomerations which discharge waste water into sensitive areas. The treatment of Italian urban waste water is fundamental to maintaining and improving the quality of bodies of surface water, and aquatic and terrestrial ecosystems which depend directly on those bodies of water, and to ensuring the implementation of the relevant EU directives, in particular 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), Directive (EU) 2020/2184 of the European Parliament and of the Council of 16 December 2020 on the quality of water intended for human consumption (OJ 2000 L 435, p. 1) 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).

54 The Commission states in its application that, in the present case, five agglomerations referred to in the judgment in Case C-85/13, the total load of which amounts to 149 069 p.e. and which discharge into sensitive areas, do not yet comply with Directive 91/271. A lack or shortage of urban waste water collecting systems or treatment plants is likely to harm the environment and must be considered as particularly serious (judgment of 31 May 2018, *Commission* v *Italy*, C-251/17, EU:C:2018:358, paragraph 72). In addition, the extent of the damage to the environment depends, largely, on the number of agglomerations covered by the infringements at issue. Thus, a number of five non-compliant agglomerations should be regarded as significant.

55 As regards the effects of non-compliance with the judgment of the Court on private and public interests, the Commission submits that the failure to comply fully with the judgment in Case C-85/13 entails, as regards the five agglomerations not yet complying with Directive 91/271, significant risks of pollution for the environment and human health. The Commission also refers to a risk of a negative impact on the implementation of other EU directives, in particular those referred to in paragraph 53 above. Incomplete implementation of the judgment in Case C-85/13 would also have an impact on the availability of sufficiently clean bodies of surface water, and on recreational and economic activities.

56 In addition, the Commission considers that three aggravating circumstances should be taken into account.

57 First, the obligation with which the Member State was, and remains, required to comply, namely the construction of suitable treatment plants for the treatment of urban waste water, is clear. The Italian authorities moreover acknowledged the infringement and notified the Commission, as soon as the judgment in Case C-85/13 was delivered, of the infrastructure construction measures planned to bring each agglomeration concerned into line with that judgment.

58 Second, that judgment forms part of settled case-law concerning Directive 91/271 and six judgments have already been delivered against the Italian Republic for failure to apply that directive correctly. Thus, a widespread situation of non-compliance with that directive has persisted for decades in Italy. The present proceedings are, moreover, one of the four pending infringement proceedings against that Member State, which together concern more than 800 agglomerations.

59 Third, the infringements found in the agglomerations at issue have lasted for more than 9 years after the delivery of the judgment in Case C-85/13 and for more than 24 years after the expiry of the time limit laid down in Article 5(2) of Directive 91/271.

60 By way of mitigating circumstances, the Commission suggests, first, the Italian Republic's cooperation throughout the present proceedings and, second, the fact that considerable progress has been made in complying with the judgment in Case C-85/13.

61 In the second place, as regards the duration of the infringement, the Commission observes that, in accordance with section 3.3 of the 2023 Communication, the coefficient for duration is expressed as a multiplier of between 1 and 3 and is calculated at a rate of 0.10 for each month that has elapsed since the date of the first judgment establishing the failure to fulfil obligations. In the present case, 109 months elapsed between 10 April 2014, the date of delivery of the judgment in Case C-85/13, and 1 June 2023, the date on which the Commission decided to bring the matter before the Court. The Commission therefore proposes that the coefficient for duration be fixed at 3.

62 In the third place, as regards the need to ensure the deterrent effect of the penalty by taking into consideration the capacity to pay of the Member State concerned, the Commission states that that deterrent effect is reflected in an 'n' factor, which, for the Italian Republic, is set at 3.41.

63 Consequently, first, the Commission proposes to calculate the lump sum on the basis of a daily amount of EUR 13 640, obtained by multiplying a flat-rate, within the meaning of section 4.2 of the 2023 Communication, set at EUR 1 000, by the coefficient for seriousness of 4 and the 'n' factor of 3.41. In accordance with section 4.2.1 of that communication, that daily lump sum should be

multiplied by the number of days during which the infringement persisted. The Commission states that the payment of the lump sum thus obtained must be imposed on the Italian Republic if that sum exceeds EUR 9 548 000, the amount of the minimum lump sum fixed for that Member State.

64 In addition, in accordance with section 2.1 of the 2023 Communication, the Commission proposes to adjust the amount of the lump sum in so far as the situation of certain agglomerations referred to in the judgment in Case C-85/13 becomes compliant with that judgment in the course of the proceedings. The Commission considers that the amount of the daily lump sum should then be divided by the total number of missing p.e.s in order to obtain the daily reduction coefficient, namely EUR 0.09 in the present case. That daily reduction coefficient should be deducted from the amount of the daily lump sum for each unit of p.e. of agglomerations whose situation will actually comply with Directive 91/271.

65 Second, the Commission proposes to set the amount of the penalty at EUR 122 760 per day, obtained by multiplying the flat-rate amount for the penalty payment set out in point 1 of Annex I to the 2023 Communication, amounting to EUR 3 000 per day, by the coefficient for seriousness of 4, the coefficient for duration of 3 and by the 'n' factor of 3.41.

66 However, the Commission proposes, in accordance with section 2.1 of that communication, to apply a sliding-scale daily penalty payment, the actual amount of which will be calculated every six months, by reducing the total amount relating to each of those periods by a percentage corresponding to the proportion of the p.e. of the agglomerations which have brought their collection and treatment systems into line with the judgment in Case C-85/13. It is for the Italian Republic to communicate to that institution evidence enabling it to establish that compliance has been achieved before the end of any half-yearly period.

67 The Commission also submits that, if that compliance is achieved gradually, it will then be necessary, in order to calculate the gradual reduction of the daily penalty payment, to divide the amount of the daily penalty payment by the total p.e.s generated by the agglomerations which, to date, have not yet complied with the judgment in Case C-85/13.

68 The Italian Republic, while agreeing with the Commission that there is a persistent delay in implementing the judgment in Case C-85/13, nevertheless submits that the amount of the financial penalties sought by that institution is excessive and puts forward several arguments in support of that finding.

69 First, account must be taken of the complexity of the physical operations to be carried out, which involve the creation of complex infrastructures, the cost of which may be subject to variations, and the need to test, put into service and monitor the operation of the infrastructure carried out. For the purposes of those operations, it is necessary to use public procurement procedures, which present a high risk of litigation.

70 Second, account should be taken of the Italian authorities' cooperation in good faith with the Commission throughout the procedure.

71 Third, the Italian Republic has committed considerable economic and financial resources to implement the measures necessary both to comply with the judgment in Case C-85/13 and to resolve the dispute between it and the European Union in the field of urban waste water, in general. The Italian Republic states that it allocated a total amount of more than EUR 3 billion for that purpose.

72 Fourth, it states that it appointed a single extraordinary administrator to be responsible for complying with the judgment in Case C-85/13, in order to encourage and speed up the design and implementation of the actions necessary for the purposes of complying with that judgment.

73 Fifth, account must be taken of the inadmissibility of the Commission's action, in so far as it relates to the Trappeto agglomeration, the generated p.e. of which does not exceed 10 000.

74 Sixth, the Italian Republic states that, while the judgment in Case C-85/13 referred to 41 agglomerations with a total load of 2 281 847 p.e., the Commission's letter of formal notice of 18 May 2018 concerned 14 agglomerations, with a total load of 462 266 p.e., and that institution's action concerns 5 agglomerations, with a total load of 149 069 p.e.

75 Seventh, account should be taken of the significant progress made during the present proceedings with a view to reducing both the total number of agglomerations not complying with Directive 91/271 and the number of p.e.s of those agglomerations. Thus, during the period between 2014 and 2023, the number of non-compliant agglomerations decreased by 88% and the number of non-compliant p.e.s was reduced by 94%. Moreover, those figures should be adapted to take account of the arguments set out in paragraphs 26 and 27 above, as regards the Trappeto and Courmayeur agglomerations.

76 Eighth, the Italian Republic submits that it is inappropriate for the Commission to refer in its action to other open infringement proceedings brought against it in the field of urban waste water. In any event, it is apparent from the data relating to the three other infringement proceedings against that Member State that the total number of more than 800 non-compliant agglomerations was gradually reduced to a total of 622 on the date on which the defence was lodged.

77 Ninth, as regards the quality of bathing water, the Italian Republic considers that the risk of damage is merely theoretical and purely potential. Furthermore, the data relating to the quality of bathing water in the coastal areas close to the agglomerations of Castellammare del Golfo I, Cinisi, Terrassini and Trappeto, as completed and updated, present an image of the quality of waters in those areas which differs from that presented in the Commission's action and reveal an improving trend.

78 Tenth, the Italian Republic submits that, if the Commission's proposals were followed, it would paradoxically risk being ordered to pay financial penalties of a significantly higher amount than those imposed on it by the Court in the judgment of 31 May 2018, *Commission* v *Italy* (C-251/17, EU:C:2018:358), even though that judgment concerned infringements of Directive 91/271 concerning a larger number of agglomerations and totalling a higher p.e. than in the present case.

79 Consequently, the Italian Republic requests that the coefficient for seriousness be set at a level lower than that proposed by the Commission.

80 As regards the Commission's request for the cumulative application of a lump sum and a penalty payment, the Italian Republic submits that, where it is certain or reasonably probable that the Member State concerned will not be in a position to comply with the judgment establishing the failure to fulfil obligations, since the timetable submitted by the national authorities intended to ensure full compliance with that judgment exceeds the duration of the procedure, the prerequisite for imposing the lump sum, namely the objective possibility for the defaulting Member State to comply in good time, is missing. Therefore, in such a case, the imposition of a lump sum should be avoided, since the deterrent function is already wholly fulfilled by the penalty payment alone.

81 That is precisely the situation in the present case, in which it is materially impossible for the Italian Republic to carry out all the operations in order to comply with the judgment in Case C-85/13 prior to the closure of the procedure before the Court under Article 260(2) TFEU. Accordingly, that Member State seeks, primarily, the imposition of a penalty payment, to the exclusion of a lump sum, in the present case.

82 In the alternative, the Italian Republic claims that it should be ordered to pay only a lump sum, which would be sufficient to penalise its failure to fulfil its obligations under EU law. The imposition of a lump sum payment of a significant amount in addition to a penalty payment would be disproportionate and would risk producing an effect contrary to that sought, by complicating its compliance with the judgment in Case C-85/13 on account of the serious financial consequences that it would entail.

83 In the further alternative, the Italian Republic claims that the obligation to pay a penalty should take effect only from the expiry of the timelines laid down. Setting the reference period for the purposes of applying the penalty payment comes under the Court's absolute discretion.

84 In its rejoinder, the Italian Republic adds that, on the date on which that statement was lodged, only three agglomerations with a total load of 78 069 p.e. still did not comply with the judgment in Case C-85/13. Consequently, since the delivery of that judgment, the number of non-compliant agglomerations has decreased by 93%, which represents a 96.6% reduction in the non-compliant load generated.

Findings of the Court

85 As a preliminary point, it must be recalled that the procedure laid down in Article 260(2) TFEU is aimed at inducing a defaulting Member State to comply with a judgment establishing a failure to fulfil obligations, thereby ensuring that EU law is in fact applied, and the measures provided for by that provision, namely a lump sum and a penalty payment, are both intended to achieve that objective (judgment of 13 June 2024, *Commission* v *Hungary (Reception of applicants for international protection II)*, C-123/22, EU:C:2024:493, paragraph 96 and the case-law cited).

86 According to settled case-law, the application of a penalty payment and a lump sum depends on their respective capacity to meet the objective pursued according to the circumstances of the case and, that being so, recourse to both types of penalty provided for is not precluded (judgment of 17 September 2015, *Commission* v *Italy*, C-367/14, EU:C:2015:611, paragraph 114 and the case-law cited).

87 While the imposition of a penalty payment seems particularly suitable for the purpose of inducing a Member State to put an end as soon as possible to a breach of obligations which, in the absence of such a measure, would tend to persist, the imposition of a lump sum is based more on the assessment of the effects on public and private interests of the failure of the Member State concerned to comply with its obligations, in particular where the infringement has persisted for a long period since the judgment initially establishing it was delivered (judgment of 17 September 2015, *Commission* v *Italy*, C-367/14, EU:C:2015:611, paragraph 115 and the case-law cited).

88 It is for the Court to determine, in the light of the circumstances of the case before it and according to the degree of persuasion and deterrence which appears to it to be required, the financial penalties appropriate, in particular, for preventing the recurrence of similar infringements of EU law (judgment of 13 June 2024, *Commission* v *Hungary (Reception of applicants for international protection II)*, C-123/22, EU:C:2024:493, paragraph 97 and the case-law cited).

89 Accordingly, the Commission's suggestions cannot bind the Court and merely constitute a useful point of reference. Similarly, guidelines such as those contained in the communications of the Commission are not binding on the Court but contribute to ensuring that the action brought by that institution is transparent, foreseeable and consistent with legal certainty (judgment of 12 March 2020, *Commission* v *Italy (Unlawful aid granted to the hotel industry in Sardinia)*, C-576/18, EU:C:2020:202, paragraph 136 and the case-law cited).

– *The possibility of imposing both a penalty payment and a lump sum*

90 According to settled case-law, the Court is empowered, in exercising the discretion conferred on it in the field in question, to impose a penalty payment and a lump sum payment cumulatively (judgment of 17 September 2015, *Commission* v *Italy*, C-367/14, EU:C:2015:611, paragraph 116 and the case-law cited), in particular where the breach of obligations both has continued for a long period and is inclined to persist (see judgment of 12 July 2005, *Commission* v *France*, C-304/02, EU:C:2005:444, paragraph 82).

91 In the light of the information set out in paragraphs 38, 44 and 46 above, it must be held that the same circumstances as those mentioned in the case-law cited in the preceding paragraph of the present judgment characterise the failure to fulfil obligations at issue in the present case. Therefore, the Italian Republic cannot effectively challenge the cumulative application to it of the two financial penalties.

– *Lump sum payment*

92 According to the case-law of the Court, the imposition of a lump sum payment and the fixing of that sum must depend in each individual case on all the relevant factors relating both to the characteristics of the failure to fulfil obligations that was established and to the conduct of the Member State involved in the procedure initiated under Article 260 TFEU. That provision confers a wide discretion on the Court in deciding whether to impose such a penalty and, if it decides to do so, in determining the amount (judgment of 13 June 2024, *Commission* v *Hungary (Reception of applicants for international protection II)*, C-123/22, EU:C:2024:493, paragraph 98 and the case-law cited).

93 In the present case, all the legal and factual elements which have led the Court to find, by the judgment in Case C-85/13, the alleged failure to fulfil obligations, and the circumstances that four infringement proceedings are ongoing against the Italian Republic in the field of urban waste water treatment, relating to a total number of more than 800 agglomerations, and that that Member State has already been the subject of several judgments establishing a failure to fulfil obligations in that specific sector of EU action, namely the judgment of 31 May 2018, *Commission* v *Italy* (C-251/17, EU:C:2018:358), and those referred to in paragraph 98 of that judgment, indicate that effective prevention of future repetition of similar infringements of EU law makes it necessary to adopt a deterrent measure such as the imposition of a lump sum payment.

94 It is for the Court, in the exercise of its discretion, to fix the lump sum in an amount appropriate to the circumstances and proportionate to the infringement. Relevant factors in that regard include the seriousness and duration of the infringements and the capacity of the Member State in question to pay (judgment of 13 June 2024, *Commission* v *Hungary (Reception of applicants for international protection II)*, C-123/22, EU:C:2024:493, paragraphs 100 and 101 and the case-law cited).

95 As regards, in the first place, the seriousness of the infringement, on the one hand, as is apparent from the second paragraph of Article 1 thereof, the purpose of Directive 91/271 is to protect the environment from the adverse effects of waste water discharges. A lack or shortage of urban waste water treatment plants is likely to harm the environment and must be regarded as particularly serious. On the other hand, the extent of the damage to the environment depends, to a large extent on the number of agglomerations affected by that infringement (judgment of 31 May 2018, *Commission* v *Italy*, C-251/17, EU:C:2018:358, paragraphs 72 and 73 and the case-law cited).

96 In the present case, as regards, first, the agglomerations of Castellammare del Golfo I, Cinisi and Terrasini, it is common ground that the obligations arising from Articles 4, 5 and 10 of Directive 91/271, as established in the judgment in Case C-85/13, had still not been complied with on the date of the hearing before the Court in the present case, namely 13 November 2024.

97 As regards, second, the Trappeto agglomeration, it should be noted, as is apparent from paragraph 32 above, that the works concerning the treatment plant of that agglomeration were completed and the management of that plant was handed over, on 22 December 2023, to AMAP, the manager of the integrated water service of the ATO of Palermo. In addition, proof of compliance with the emission limits laid down by Directive 91/271 for the period between 23 June and 15 December 2023 was reported in the rejoinder.

98 In those circumstances, it must be held, as the Commission also agreed at the hearing, that the Italian Republic, on 15 December 2023, took all the measures necessary to bring the Trappeto agglomeration into line with the obligations arising from Articles 4, 5 and 10 of Directive 91/271, as established in the judgment in Case C-85/13.

99 As regards, third, the Courmayer agglomeration, as is apparent from paragraph 33 above, the Italian Republic claimed, in its rejoinder, that the situation of that agglomeration complied with Directive 91/271, not only from a physical point of view, with the completion and connection of the collecting systems to the La Salle treatment plant, but also from the point of view of the

functional nature and effectiveness of the treatment. In addition, that Member State relied, at the hearing, on new analyses communicated to the Commission, which confirm compliance with the emission limits laid down by that directive.

100 That being so, the Commission disputed at that hearing that the Italian Republic had adduced evidence that the situation of the Courmayer agglomeration complied with the requirements of that directive. The Commission noted, without being contradicted by the Italian Republic, first, that the new evidence submitted by that Member State concerned only a fraction of that agglomeration and thus did not establish the conformity of that agglomeration, as a whole, with that directive, and, second, that the acceptance report for the second part of the construction work and connection of the collecting systems to that plant, the resulting acceptance certificate for the installation and the operating certificate of that plant were not provided.

101 In those circumstances, it must be held that the Italian Republic has not established, at the date of the hearing, that it had taken all the measures necessary to bring the Courmayeur agglomeration into line with the obligations arising from Articles 4 and 10 of Directive 91/271, as established in the judgment in Case C-85/13.

102 It follows that the number of agglomerations which, on that date, did not comply with Directive 91/271, namely 4, was significantly reduced in relation to the total number of agglomerations which were the subject of the judgment in Case C-85/13, namely 41, and, accordingly, the damage to the environment decreased compared with that resulting from the initial infringement established in that judgment (see, to that effect, judgment of 22 June 2016, *Commission* v *Portugal* (C-557/14, EU:C:2016:471, paragraph 75). Therefore, the Italian Republic considerably reduced the damage to the environment resulting from the infringement established by the judgment in Case C-85/13.

103 The fact remains, however, that damage to the environment, albeit less significant, persists. That damage is all the more serious because all four non-compliant agglomerations discharge their water into receiving waters which are regarded as sensitive areas. By classifying the territories concerned as 'sensitive areas', in accordance with Article 5(1) of Directive 91/271 and Annex II thereto, the Italian Republic has recognised the need for increased environmental protection on those territories. The lack of treatment for urban waste water constitutes damage to the environment (see, to that effect, judgment of 17 October 2013, *Commission* v *Belgium* (C-533/11, EU:C:2013:659, paragraph 55).

104 In the light of the risks which, having regard to the case-law referred to in paragraph 95 above, the infringement in question entails for the important public interests at issue, which are linked to the protection of the environment, neither the complexity of the physical interventions to be carried out nor the fact, assuming it were established, that the risk of damage to the quality of bathing water in the coastal areas concerned is theoretical and purely potential, or that the quality of that water would, in any event, display an improving trend, cannot lead to a less severe assessment of the seriousness of that infringement.

105 Nonetheless, it is necessary to take into account, as a mitigating circumstance, first, the cooperation of the Italian Republic with the Commission's services throughout the procedure, second, the progress made by that Member State in complying with the judgment in Case C-85/13, third, the significant investment efforts which that Member State has made to comply with that judgment and, fourth, the appointment of a single extraordinary administrator for that purpose.

106 As regards, in the second place, the duration of the infringement, account must be taken of the period between the delivery of the judgment establishing the first infringement and the date on which the Court assesses the facts (see, to that effect, judgment of 13 June 2024, *Commission* v *Hungary (Reception of applicants for international protection II)*, C-123/22, EU:C:2024:493, paragraph 126 and the case-law cited).

107 In the present case, the failure to comply with the judgment in Case C-85/13 has continued, on the date on which the Court assesses the facts, for approximately 11 years, which constitutes an excessive length of time, even though account must be taken of the significant period of several years that was required for the necessary infrastructure works.

108 As regards, in the third place, the capacity to pay of the Member State concerned, the Commission proposed, in accordance with sections 3.4 and 4.2 of the 2023 Communication, to take into account the gross domestic product (GDP) of that Member State in relation to the average GDP of the Member States for two thirds of the calculation and its population in relation to the average population of the Member States, as a demographic criterion, for one third of the calculation.

109 In that regard, it is apparent from the Court's recent case-law that when determining the capacity to pay of the Member State concerned, a demographic criterion cannot be taken into account as part of the method of calculating the 'n' factor, representing the capacity to pay of the Member State concerned in relation to other Member States' capacity to pay, in accordance with the detailed rules laid down in sections 3.4 and 4.2 of the 2023 Communication (judgment of 25 April 2024, *Commission* v *Poland (Whistleblowers directive)*, C-147/23, EU:C:2024:346, paragraph 86).

110 Thus, in order to determine the capacity of the Italian Republic to pay, it is necessary to rely on its GDP, as the predominant factor, and to take into account recent trends in that GDP, at the time of the Court's examination of the facts (see, to that effect, judgment of 13 June 2024, *Commission* v *Hungary (Reception of applicants for international protection II)*, C-123/22, EU:C:2024:493, paragraph 131 and the case-law cited).

111 In the light of the foregoing considerations and in the absence of the Commission's determination of a valid criterion for the calculation of the 'n' factor establishing the Italian Republic's capacity to pay, it is by taking into account the average GDP of that Member State calculated over the last three years that the amount of the lump sum should be fixed. The Court considers that a fair assessment will be made of the circumstances of the case by fixing the amount of the lump sum to be imposed on that Member State at EUR 10 million.

– *Penalty payment*

112 According to settled case-law, the imposition of a penalty payment is, in principle, justified only in so far as the failure to comply with an earlier judgment of the Court continues up to the time of the Court's examination of the facts (judgment of 13 June 2024 in *Commission* v *Hungary (Reception of applicants for international protection II)*, C-123/22, EU:C:2024:493, paragraph 135 and the case-law cited).

113 In the present case, as is apparent from paragraphs 96 to 102 above, at the date of the hearing, the measures necessary to comply with the judgment in Case C-85/13 had not yet been adopted in full.

114 In those circumstances, an order imposing a penalty payment on the Italian Republic is an appropriate financial means by which to encourage that Member State to take the measures necessary to put an end to the infringement established and to ensure full compliance with the judgment in Case C-85/13.

115 In that regard, according to settled case-law that penalty payment must be decided upon according to the degree of persuasion needed in order for the Member State in question to alter its conduct and bring to an end the impugned conduct (judgment of 13 June 2024, *Commission* v *Hungary (Reception of applicants for international protection II)*, C-123/22, EU:C:2024:493, paragraph 138 and the case-law cited).

116 In exercising its discretion in the matter, it is for the Court to set that penalty payment so that it is both appropriate to the circumstances and proportionate to the infringement established and the capacity to pay of the Member State concerned (judgment of 13 June 2024, *Commission* v *Hungary (Reception of applicants for international protection II)*, C-123/22, EU:C:2024:493 paragraph 139 and the case-law cited).

117 For the purposes of determining the amount of a penalty payment, the basic criteria which must be taken into consideration in order to ensure that that payment has coercive effect and that EU law is applied uniformly and effectively are, in principle, the seriousness of the infringements, their duration and the ability of the Member State in question to pay. In applying those criteria, regard must be had in particular to the effects of failure to comply on private and public interests and to the urgency of inducing the Member State concerned to fulfil its obligations (judgment of 13 June 2024, *Commission* v *Hungary (Reception of applicants for international protection II)*, C-123/22, EU:C:2024:493, paragraph 141 and the case-law cited).

118 As regards those factors, the circumstances which must be taken into account are clear, inter alia, from the grounds set out in paragraphs 96 to 110 above, relating to the seriousness and duration of the infringement at issue and to the capacity of the Italian Republic to pay.

119 It is also necessary to take into account, as an aggravating circumstance, the fact that, according to the latest information provided by the Italian Republic in its rejoinder, full compliance with the judgment in Case C-85/13 should take place only in 2026, which amounts to a delay of between 26 and 28 years compared to the date by which the Member States had to ensure compliance with Articles 4 and/or 5, and 10 of Directive 91/271.

120 In addition, the Commission has proposed that the Court gradually reduce the penalty payment in accordance with the progress made in complying with the judgment in Case C-85/13.

121 In that regard, it should be noted that, even if, in order to ensure full compliance with the Court's judgment, the penalty payment should be payable in its entirety until such time as the Member State has taken all the measures necessary to bring to an end the failure to fulfil obligations established, nevertheless, in certain specific cases, a penalty which takes account of the progress that the Member State may have made in complying with its obligations may be envisaged (judgment of 31 May 2018 in *Commission* v *Italy*, C-251/17, EU:C:2018:358, paragraph 83 and the case-law cited).

122 In the present case, it must be held that, following the bringing into line of the situation of the Trappeto agglomeration with the obligations arising from Directive 91/271, the number of p.e.s of agglomerations which do not have urban waste water collecting and treatment systems complying with the relevant provisions of that directive was, at the date of the hearing, 137 253.

123 Having regard to all of the circumstances in the present case, the Court considers it appropriate to impose a sliding-scale periodic penalty payment of EUR 75 000 per day.

124 As regards the periodicity of the penalty payment, the phased reduction component is fixed, in accordance with the Commission's proposal, on a six-monthly basis, since the establishment and analysis of proof that the situation of the agglomerations in question complies with Directive 91/271 may require a certain period of time and in order to take account of any progress made by the Italian Republic. Thus, the total amount relating to each of those periods will have to be reduced by a percentage corresponding to the proportion representing the number of p.e.s of the agglomerations whose urban waste water collection and treatment systems have been brought into line with the judgment in Case C-85/13 (see, to that effect, judgment of 31 May 2018, *Commission* v *Italy* (C-251/17, EU:C:2018:358, paragraph 87 and the case-law cited).

125 The Italian Republic must therefore be ordered to pay the Commission a penalty payment of EUR 13 687 500 for every six months of delay in implementing the measures necessary to comply with the judgment in Case C-85/13, from the date of delivery of the present judgment until full compliance with the judgment in Case C-85/13, the actual amount of which must be calculated at the end of each six-month period by reducing the total amount relating to each of those periods by a percentage corresponding to the proportion representing the number of p.e.s of the agglomerations whose urban waste water collection and treatment systems have been brought into line with the judgment in Case C-85/13, at the end of the period under consideration in relation to the number of p.e.s of agglomerations which do not have such systems on the day of delivery of the present judgment.

Costs

126 Under Article 138(1) of the Rules of Procedure of the Court, 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 Italian Republic has been unsuccessful in its submissions, the latter must be ordered to pay the costs.

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

1. **Declares that, by failing to adopt all the measures necessary to ensure compliance with the judgment of 10 April 2014, *Commission* v *Italy* (C-85/13, EU:C:2014:251), the Italian Republic has failed to fulfil its obligations under Article 260(1) TFEU;**

2. **Orders the Italian Republic to pay to the European Commission a lump sum of EUR 10 million;**

3. **Orders the Italian Republic, if the failure to fulfil obligations established in paragraph 1 has continued until the day of delivery of the present judgment, to pay to the European Commission a penalty payment of EUR 13 687 500 for every six months of delay in implementing the measures necessary to comply with the judgment of 10 April 2014,**

Commission v _Italy_ (C-85/13, EU:C:2014:251), from the date of delivery of the present judgment until the full compliance with the judgment of 10 April 2014, _Commission_ v _Italy_ (C-85/13, EU:C:2014:251), the actual amount of which must be calculated at the end of each six-month period by reducing the total amount relating to each of those periods by a percentage corresponding to the proportion representing the number of population equivalents of the agglomerations whose urban waste water collection and treatment systems have been brought into line with the judgment of 10 April 2014, _Commission_ v _Italy_ (C-85/13, EU:C:2014:251), at the end of the period under consideration in relation to the number of population equivalents of the agglomerations not having such systems on the day of delivery of the present judgment;

4. **Orders the Italian Republic to pay the costs.**

[Signatures]