

Enforcing the law: update on water-related infringement procedures

The past three months have seen a range of legal enforcement actions by the Commission for non-compliance with EU water-related legislation, in particular on the Water Framework Directive, the Floods Directive, the Drinking Water Directive and the Urban Waste Water Treatment Directive, i.e. Referrals to the Court of Justice, Reasoned Opinions and Letters of Formal Notice.

The article provides details on the individual cases against

- **Cyprus,**
- **Estonia,**
- **Greece,**
- **Ireland,**
- **Italy, and**
- **Spain.**

as well as general information on the legal background (Treaty on European Union, Treaty on Functioning of the European Union) and the legal procedure.



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The article provides details on the individual cases against Cyprus, Estonia, Greece, Ireland, Italy and Spain., as well as general information on the legal background (Treaty on European Union, Treaty on Functioning of the European Union) and the legal procedure.

March 2018

Referrals to the Court of Justice of the European Union

Spain: Referral to the Court on Water Framework Directive

The European Commission decided to refer Spain to the Court of Justice of the EU for not reviewing and updating the River Basin Management Plans for the seven river basin districts in the Canary Islands (El Hierro, Fuerteventura, Gran Canaria, La Gomera, La Palma, Lanzarote, and Tenerife). River basin management plans are the foundation of Water Framework Directive 2000/60/EC. These Plans give a comprehensive overview of the main issues for each river basin district and should include the specific measures needed to achieve environmental quality objectives. Spain had to review and update all River Basin Management Plans on its territory by 22 December 2015 and to inform the Commission of these measures by 22 March 2016. The Spanish authorities have also failed to ensure compliance with the public information and consultation obligations for establishing these

plans. The Commission has repeatedly urged Spain to fulfil its obligations: firstly, by sending a letter of formal notice in April 2017 and secondly, by issuing a reasoned opinion - in October 2017.

Reasoned Opinions

Ireland and Spain: Reasoned Opinions on Floods Directive

Commission urges IRELAND and SPAIN to act on protection against flooding
The Commission is calling on Ireland and Spain to comply with the requirements of the Floods Directive 2007/60/EC. The Directive aims to reduce and manage the risks that floods pose to human health, the environment and economic activity. Under EU law, Member States had to complete and publish flood risk management plans, and notify them to the Commission by 22 March 2016. In April 2017, the Commission opened the infringement procedure by sending a letter of formal notice to the Irish authorities due to their failure to complete, publish and communicate flood risk management plans for seven river basin districts. As Ireland has still not notified these plans, the Commission is sending a reasoned opinion. Ireland has two months to reply. In addition, the Commission decided today to send a letter of formal notice to Spain as the Spanish authorities have failed to inform the Commission of the flood risk management plans for the river basin districts of Catalonia and the Canary Islands. Spain also has two months to reply.

May 2018

Reasoned Opinions

Greece: Reasoned Opinion on Floods Directive

Water: Commission urges on GREECE to comply with rules on flood prevention
The Commission calls on Greece to comply with the requirements of the Floods Directive 2007/60/EC. The Directive aims to reduce and manage the risks that floods pose to human health, the environment and economic activity. Under EU law, Member States had to complete and publish flood risk management plans, and notify them to the Commission by 22 March 2016. In April 2017, the Commission opened the infringement procedure by sending a letter of formal notice to the Greek authorities due to their failure to complete, publish and communicate the necessary 15 flood risk management plans. As Greece has still not notified these plans, the Commission is sending a reasoned opinion. Greece has two months to reply. If Greece fails to act within two months, the case may be referred to the Court of Justice of the EU.

Spain: Reasoned Opinion on Drinking Water Directive

Commission urges SPAIN to enact EU rules on drinking water
The Commission is calling on Spain to complete the enactment of the Drinking Water Directive into its national laws. The Drinking Water Directive aims to protect human health from adverse effects of any contamination of water intended for human consumption by ensuring that it is wholesome and clean. In October 2015, technical annexes laying down the minimum requirements for monitoring drinking water were revised (Directive (EU) 2015/1787), in light of technical and scientific progress. Member States were obliged to adopt the measures necessary to comply with the Directive by 27 October 2017. After Spain missed the initial deadline, the Commission sent a letter of formal notice in November 2017. Spain has acknowledged that their authorities are still preparing the necessary measures for complying with the Directive in question. The Commission is now sending a reasoned opinion. Spain has two months to inform the Commission of the measures taken to address the shortcomings; otherwise, the case may be referred to the Court of Justice of the EU.

Letters of Formal Notice

Italy: Letter of Formal Notice on complying with a Court judgment on the Urban Waste Water Treatment Directive

Urban waste water: Commission urges ITALY to comply with the Court ruling and ensure proper wastewater treatment

The European Commission calls on Italy to fully comply with the ruling of the Court of Justice of the EU of 10 April 2014 (case C-85/13). The Court found that Italy had breached its obligations under the Urban Waste Water Treatment Directive 91/271/EEC, by failing to ensure that urban waste water is adequately collected and treated. The Directive requires Member States to ensure that all agglomerations (towns, cities and settlements), with a population of above 10,000 inhabitants, and discharging wastewater into sensitive areas, properly collect and treat their urban wastewater. Despite the progress made since the Court ruling, compliance has still not been reached in 14 agglomerations. As four years have passed since the ruling, the Commission is now sending a last reminder to Italy before referring the case back to Court, and urging for financial sanctions to be imposed. Italy has two months to reply to the letter of formal notice; otherwise, the Commission may decide to send a reasoned opinion.

This second infringement procedure would, if taken to the Court, entail an application for fines (lump sum plus recurring penalty payment)

June 2018

Reasoned Opinions

Cyprus and Estonia: Reasoned Opinions on Urban Waste Water Treatment Directive

The European Commission calls on Cyprus and Estonia to comply with EU law on urban waste water and ensure that waste water from towns and cities is properly treated. Under the Urban Waste Water Treatment Directive 91/271/EEC, towns and cities are required to put in place the necessary infrastructure in order to collect and treat their urban waste water. Untreated waste water can put human health at risk and pollute lakes, rivers, soil and coastal and groundwater. Cyprus has failed to provide a collecting system for 36 agglomerations. In the same areas, the Cypriot authorities have also failed to ensure that the urban waste water entering collecting systems is subject to appropriate treatment. The Commission sent a letter of formal notice in July 2017. In Estonia, authorities still have to ensure proper urban waste water treatment in eight agglomerations. The Commission sent a letter of formal notice in December 2016. As in both compliance cases with EU rules is not expected in the near future, the Commission is sending a reasoned opinion to Cyprus and Estonia to speed up their efforts. If the 2 countries fail to act within two months, the cases may be referred to the Court of Justice of the EU.

Romania: Letter of Formal Notice on Urban Waste Water Treatment Directive

The Commission decided to send a letter of formal notice to Romania for its failure to comply with EU rules on urban waste water treatment (Urban Waste Water Treatment Directive 91/271/EEC) in large urban areas (i.e. agglomerations). Following Romania's accession to the EU, large agglomerations should have ensured adequate collection of urban waste water by 31 December 2013 and treatment by 31 December 2015. However, according to the latest data provided by the Romanian authorities, 189 large agglomerations are still not in conformity with the urban waste water collection obligations under EU law, while 198 large agglomerations do not comply with treatment obligations. If Romania fails to act within two months, the cases may be referred to the Court of Justice of the EU.

General information about infringement procedures

Legal basis – the European Union as a Union of Law

According to the Treaties (Treaty on European Union, Treaty on Functioning of the European Union), Member States are obliged to comply with EU legislation adopted by the legislator (European Parliament and Council), and the Commission has the right and obligation to scrutinise such compliance and where appropriate take legal action.

Opening of an infringement procedure: formal contacts between the Commission and the Member State concerned

If the Commission considers that there may be an infringement of EU law which warrants the opening of an infringement procedure, it addresses a "letter of formal notice" to the Member State concerned, requesting it to submit its observations by a specified date.

The Member State has to adopt a position on the points of fact and of law on which the Commission bases its decision to open the infringement procedure.

Issuing a Reasoned Opinion

In the light of the reply or absence of a reply from the Member State concerned, the Commission may decide to address a "Reasoned Opinion" to the Member State, clearly and definitively setting out the reasons why it considers there to have been an infringement of EU law and calling on the Member State to comply with EU law within a specified period (normally two months).

The purpose of those formal contacts is to determine whether there is indeed an infringement of EU law and, if so, to resolve the case at this stage without having to take it to the European Court of Justice.

In the light of the reply, the Commission may also decide not to proceed with the infringement procedure, for example where the Member State provides credible assurances as to its intention to amend its legislation or administrative practice.

Referral to the European Court of Justice

If the Member State fails to comply with the Reasoned Opinion, the Commission may decide to bring the case before the European Court of Justice. If the Court finds in its judgment that a Member States has failed to take the measures needed to conform.

Second referral to the European Court of Justice

If a Member State fails to comply with a judgment given against it, the Commission has the possibility to apply for a second court ruling ordering that State to pay a lump-sum fine or a penalty (Article 260 TFEU).

Examples of recent years for judgments entailing penalty payments:

- Ireland, waste water disposal in rural areas (2012)
<http://curia.europa.eu/juris/document/document.jsf?text=&docid=131979&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=312647>
- Belgium, Urban Waste Water Treatment Directive (2013)
<http://curia.europa.eu/juris/document/document.jsf?text=&docid=143181&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=312969>
- Luxembourg, Urban Waste Water Treatment Directive (2013)
<http://curia.europa.eu/juris/document/document.jsf?text=&docid=144983&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=312835>
- Greece, Waste Directive (2014)
<http://curia.europa.eu/juris/document/document.jsf?text=&docid=160243&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=292605>
- Italy, Waste Directive, Hazardous Waste Directive and Landfill Directive (2014)

- <http://curia.europa.eu/juris/document/document.jsf?text=&docid=160245&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=292801>
- Greece, Urban Waste Water Treatment Directive (2015)
<http://curia.europa.eu/juris/document/document.jsf?text=&docid=169829&pageIndex=0&doclang=FR&mode=lst&dir=&occ=first&part=1&cid=290858>
- Italy, Waste Framework Directive (2015)
<http://curia.europa.eu/juris/document/document.jsf?text=&docid=165914&pageIndex=0&doclang=FR&mode=lst&dir=&occ=first&part=1&cid=291309>
- Greece, Waste Legislation (2016)
<http://curia.europa.eu/juris/document/document.jsf?text=article%2B260&docid=183108&pageIndex=0&doclang=EN&mode=req&dir=&occ=first&part=1&cid=111578#ctx1>
- Portugal, Urban Waste Water Treatment Directive (2016)
<http://curia.europa.eu/juris/document/document.jsf?text=&docid=180685&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=512840>