



## Reports of Cases

### JUDGMENT OF THE COURT (Eighth Chamber)

5 December 2019\*

(Failure of a Member State to fulfil obligations — Directive 2008/98/EC — Articles 30 and 33 — Waste management plans — Autonomous Communities of the Balearic Islands and the Canary Islands (Spain) — Obligation to revise — Obligation to notify the Commission — No proper formal notice — Letter of formal notice sent prematurely — Inadmissibility)

In Case C-642/18,

ACTION under Article 258 TFEU for failure to fulfil obligations, brought on 12 October 2018,

**European Commission**, represented by S. Pardo Quintillán and E. Sanfrutos Cano and F. Thiran, acting as Agents,

applicant,

v

**Kingdom of Spain**, represented by L. Aguilera Ruiz, acting as Agent,

defendant,

THE COURT (Eighth Chamber),

composed of L.S. Rossi (Rapporteur), President of the Chamber, J. Malenovský and F. Biltgen, Judges,

Advocate General: J. Kokott,

Registrar: A. Calot Escobar,

having regard to the written procedure,

after hearing the Opinion of the Advocate General at the sitting on 5 September 2019,

gives the following

### Judgment

- 1 By its application, the European Commission asks the Court to declare that, by failing to revise the waste management plans provided for in Directive 2008/98/EC of the European Parliament and of the Council of 19 November 2008 on waste and repealing certain Directives (OJ 2008 L 312, p. 3)

\* Language of the case: Spanish.

concerning the Autonomous Communities of the Balearic Islands and the Canary Islands and by failing to inform the Commission officially of the revision of those plans, the Kingdom of Spain has failed to fulfil its obligations under Article 30(1) and Article 33(1), respectively, of that directive.

### **Legal context**

2 Article 28(1) of Directive 2008/98 provides:

‘Member States shall ensure that their competent authorities establish, in accordance with Articles 1, 4, 13 and 16, one or more waste management plans.

Those plans shall, alone or in combination, cover the entire geographical territory of the Member State concerned.’

3 Article 30(1) of that directive provides:

‘Member States shall ensure that the waste management plans and waste prevention programmes are evaluated at least every sixth year and revised as appropriate and, where relevant, in accordance with Articles 9 and 11.’

4 Article 33(1) of that directive is worded as follows:

‘Member States shall inform the Commission of the waste management plans and waste prevention programmes referred to in Articles 28 and 29, once adopted, and of any substantial revisions to the plans and programmes.’

5 Under Article 40(1) of Directive 2008/98, the deadline for transposition of that directive was 12 December 2010, 2 years after its entry into force on 12 December 2008.

### **Pre-litigation procedure**

6 On 18 November 2016, the Commission sent a letter of formal notice to the Kingdom of Spain, in which it maintained that the Kingdom of Spain had not adopted or revised waste management plans concerning the Autonomous Communities of Aragon, the Balearic Islands, the Canary Islands, Cantabria, Castilla-La Mancha, Catalonia, Extremadura, Galicia, La Rioja, Madrid, Murcia, Navarre and the Autonomous City of Ceuta and, consequently, as it had not notified it of those plans, the Kingdom of Spain had infringed Articles 28(1), 30(1) and 33(1) of Directive 2008/98.

7 The Kingdom of Spain replied to that letter of formal notice by letter of 18 January 2017.

8 On 14 July 2017, the Commission issued a reasoned opinion in which it concluded that the Kingdom of Spain was continuing to fail to fulfil its obligations under Directive 2008/98 with regard to the Autonomous Communities of Aragon, the Balearic Islands, the Canary Islands, Madrid and the Autonomous City of Ceuta and called on that Member State to adopt the necessary measures within 2 months of receiving that reasoned opinion, namely, by 14 September 2017.

9 The Kingdom of Spain replied to that reasoned opinion by letters dated 14 September 2017, 17 January, 18 May, 23 May and 6 June 2018.

10 The Commission, as it considered that the Kingdom of Spain had still not taken the necessary measures to comply with its obligations under Directive 2008/98, decided, on 12 October 2018, to bring the present action for failure to fulfil obligations.

### **Procedure before the Court**

- 11 In its application, the Commission claimed that, by failing to adopt or revise and, consequently, by failing to notify the waste management plans for the Autonomous Communities of Aragon, the Balearic Islands, the Canary Islands, Madrid and the Autonomous City of Ceuta, the Kingdom of Spain had failed to fulfil its obligations under Articles 28(1), 30(1) and 33(1), respectively, of Directive 2008/98.
- 12 In the light of the information provided by the Kingdom of Spain in its defence concerning, in essence, the adoption and transmission to the Commission, in 2018, of new waste management plans concerning the Autonomous Communities of Aragon and Madrid and the Autonomous City of Ceuta, the Commission decided to withdraw its action for failure to fulfil obligations, in so far as that action concerned those autonomous communities and that autonomous city. In addition, in respect of the Autonomous Communities of the Balearic Islands and the Canary Islands, the Commission decided to withdraw the complaint concerning the failure to adopt waste management plans concerning those two autonomous communities, that is to say, the complaint alleging infringement of Article 28(1) of Directive 2008/98, since those plans, adopted before the entry into force of that directive, had been communicated by the Kingdom of Spain.
- 13 The Commission thus limited the subject matter of its action for failure to fulfil obligations to the complaints concerning breach of the obligations to revise and to notify waste management plans provided for in Article 30(1) of Directive 2008/98 and Article 33(1) of that directive, respectively, as regards only the Autonomous Communities of the Balearic Islands and the Canary Islands.

### **Forms of order sought by the parties**

- 14 The Commission claims that the Court should:
- declare that, by not revising the waste management plans provided for in Directive 2008/98 concerning the Autonomous Communities of the Balearic Islands and the Canary Islands, the Kingdom of Spain failed to fulfil its obligations under Article 30(1) of that directive;
  - declare that, by not officially informing the Commission of the revision of the waste management plans concerning the Autonomous Communities of the Balearic Islands and the Canary Islands, the Kingdom of Spain failed to fulfil its obligations under Article 33(1) of that directive;
  - order the Kingdom of Spain to pay the costs.
- 15 The Kingdom of Spain contends that the Court should:
- dismiss the action;
  - order the Commission to pay the costs.

### **Admissibility of the action**

- 16 It must be borne in mind that the purpose of the pre-litigation procedure laid down by the first paragraph of Article 258 TFEU is to give the Member State concerned an opportunity to comply with its obligations under EU law or to avail itself of its right to defend itself against the complaints made by the Commission. The proper conduct of that procedure thus constitutes an essential guarantee required by the TFEU in order to protect the rights of the Member State concerned. It is only when that guarantee is observed that the contentious procedure before the Court can enable it to determine

whether the Member State has in fact failed to fulfil the obligations which the Commission alleges it has breached. More specifically, the purpose of the letter of formal notice in the pre-litigation procedure is to delimit the subject matter of the dispute and to indicate to the Member State, which is invited to submit its observations, the factors enabling it to prepare its defence (see, to that effect, judgment of 5 June 2003, *Commission v Italy*, C-145/01, EU:C:2003:324, paragraph 17 and the case-law cited).

- 17 Similarly, according to the settled case-law of the Court, in order for a letter of formal notice to be issued, in accordance with the first paragraph of Article 258, a prior failure by the Member State concerned to fulfil an obligation owed by it must be capable of being legitimately alleged by the Commission (see, to that effect, inter alia, judgments of 15 February 2001, *Commission v France*, C-230/99, EU:C:2001:100, paragraph 32, and of 27 October 2005, *Commission v Luxembourg*, C-23/05, EU:C:2005:660, paragraph 7).
- 18 It follows that the opening of the pre-litigation stage of the procedure provided for in the first paragraph of Article 258 TFEU, even though no breach of an obligation on the part of the Member State concerned can be legitimately alleged by the Commission, necessarily affects the regularity of the procedure for finding that a Member State has failed to fulfil its obligations.
- 19 Moreover, the failure to give formal notice in accordance with the requirements of Article 258 TFEU is an absolute bar to proceeding with a case, which the Court may at any time consider of its own motion (see, to that effect, order of 13 September 2000, *Commission v Netherlands*, C-341/97, EU:C:2000:434, paragraph 21, and judgment of 27 October 2005, *Commission v Luxembourg*, C-23/05, EU:C:2005:660, paragraphs 5 and 7).
- 20 In the present case, as the Advocate General pointed out in, in essence, in points 17 to 19 of her Opinion, the Commission, in sending its letter of formal notice to the Kingdom of Spain on 18 November 2016, criticised that Member State for failing to fulfil certain obligations under Directive 2008/98 which could not yet be invoked on that date.
- 21 In the first place, as is apparent in the reply, the Commission interpreted Article 30(1) of that directive, which provides that Member States are to ensure that waste management plans are evaluated at least every sixth year and revised as appropriate, as meaning that it required Member States to revise those plans within 6 years of the date of entry into force of that directive, namely from 12 December 2008.
- 22 However, the obligation to evaluate and, where necessary, to revise the waste management plans adopted by the Autonomous Communities of the Balearic Islands and the Canary Islands, laid down in Article 30(1) of Directive 2008/98, could arise only on the date of expiry of the deadline for transposition of that directive, as follows from Article 40(1) of that directive, namely 12 December 2010.
- 23 Consequently, the deadline for Member States to fulfil their obligations under Article 30(1) of Directive 2008/98 expired only 6 years after the expiry of the deadline for transposition of that directive, that is to say on 12 December 2016.
- 24 Consequently, by giving notice to the Kingdom of Spain, on 18 November 2016, to put an end to an alleged breach of the obligation laid down in Article 30(1) of that directive, the Commission prematurely opened the pre-litigation stage of the procedure provided for in Article 258 TFEU.
- 25 Since the obligation which the Commission alleges was breached did not arise until after the date on which the letter of formal notice was issued, no failure to fulfil the obligation laid down in Article 30(1) could be validly invoked by the Commission.

- 26 Moreover, to take the opposite view would clearly jeopardise the requirements of legal certainty, which are inherent in any procedure capable of becoming contentious (see, by analogy, judgment of 15 February 2001, *Commission v France*, C-230/99, EU:C:2001:100, paragraph 34 and the case-law cited).
- 27 In the second place, the same is true of the alleged breach of the obligation to notify any substantial revision of the waste management plans, within the meaning of Article 33(1) of Directive 2008/98.
- 28 Since that obligation to notify is ancillary to the obligation to revise those plans, it is only after the completion of the evaluation procedure and any revision of those plans that it is possible to assess the scope of the revision and to establish, where appropriate, that a Member State has failed to comply with the obligation to notify referred to in Article 33(1) of that directive.
- 29 It also follows that no breach of the obligation to notify, for the purposes of Article 33(1), could be legitimately alleged by the Commission before the expiry of the six-year period laid down in Article 30(1) of that directive, that is to say, before 12 December 2016.
- 30 In the light of all the foregoing considerations, the Commission's action for failure to fulfil obligations must be dismissed as inadmissible.

### **Costs**

- 31 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 Kingdom of Spain has applied for the Commission to pay the costs and the action brought by it has been declared inadmissible, the Commission must be ordered to pay the costs.

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

- 1. Dismisses the action as inadmissible;**
- 2. Orders the European Commission to pay the costs.**

[Signatures]