# JUDGMENT OF THE COURT (Sixth Chamber)
1 October 1998 *

In Case C-71/97,

**Commission of the European Communities**, represented by Fernando Castillo de la Torre, of its Legal Service, acting as Agent, with an address for service in Luxembourg at the office of Carlos Gómez de la Cruz, of its Legal Service, Wagner Centre, Kirchberg,

applicant,

v

**Kingdom of Spain**, represented by Santiago Ortiz Vaamonde, Abogado del Estado, acting as Agent, with an address for service in Luxembourg at the Spanish Embassy, 4—6 Boulevard E. Servais,

defendant,

APPLICATION for a declaration that, first, by failing to designate the zones considered to be vulnerable and to notify the Commission of those designations and, second, by failing to establish the codes of good agricultural practice and to notify the Commission thereof, the Kingdom of Spain has failed to fulfil its obligations under Articles 3 and 4 of Council Directive 91/676/EEC of 12 December 1991 concerning the protection of waters against pollution caused by nitrates from agricultural sources (OJ 1991 L 375, p. 1),

* Language of the case: Spanish.

THE COURT (Sixth Chamber),

composed of: H. Ragnemalm, President of the Chamber, G. F. Mancini, J. L. Murray (Rapporteur), G. Hirsch and K. M. Ioannou, Judges,

Advocate General: J. Mischo,
Registrar: R. Grass,

having regard to the report of the Judge-Rapporteur,

after hearing the Opinion of the Advocate General at the sitting on 26 March 1998,

gives the following

## Judgment

1 By application lodged at the Registry of the Court on 19 February 1997, the Commission of the European Communities brought an action under Article 169 of the EC Treaty for a declaration that, first, by failing to designate the zones considered to be vulnerable and to notify it of those designations, and, second, by failing to establish the codes of good agricultural practice and to notify it thereof, the Kingdom of Spain has failed to fulfil its obligations under Articles 3 and 4 of Council Directive 91/676/EEC of 12 December 1991 concerning the protection of waters against pollution caused by nitrates from agricultural sources (OJ 1991 L 375, p. 1, hereinafter 'the Directive').

2 Article 3(2) of the Directive provides that, within a two-year period following the notification of the Directive, Member States are to designate as vulnerable zones all known areas of land in their territories which drain into the waters identified

according to Article 3(1) and which contribute to pollution and are to notify the Commission of that initial designation within six months.

3 According to Article 4(1)(a) and (2) of the Directive, Member States are to establish a code or codes of good agricultural practice within a two-year period following the notification of the Directive and to submit details of those codes to the Commission.

4 Article 12 of the Directive provides, first, that the Member States are to bring into force the laws, regulations and administrative provisions necessary to comply with the Directive within two years of its notification and, second, that they are to inform the Commission thereof forthwith.

5 Since it had not received any communication from the Kingdom of Spain concerning the measures adopted in order to comply with the Directive and in the absence of any other information enabling it to ascertain whether the Kingdom of Spain had actually adopted the necessary measures, on 10 May 1995 the Commission formally requested the Spanish Government to submits its comments within two months, in accordance with the procedure laid down in Article 169 of the Treaty. In that letter of formal notice, the Commission stated that, in addition to having failed to notify the national measures implementing the Directive, the Kingdom of Spain had failed to comply with Article 3(2) and (4) of the Directive.

6 By letter of 26 June 1995 the Spanish authorities submitted a report on the situation to the Commission, together with a draft royal decree intended to transpose the Directive into domestic law. By letter of 14 March 1996 they subsequently notified it of Royal Decree No 261/1996 of 16 February 1996 concerning the protection of waters against pollution caused by nitrates from agricultural sources, intended to transpose the Directive. That decree was published in the *Boletín Oficial del Estado* No 61 of 11 March 1996.

7 Since the Kingdom of Spain had still not notified it of the designations required by Article 3 of the Directive and of the codes of good agricultural practice required by Article 4, the Commission sent a reasoned opinion to it on 26 September 1996, calling upon it to comply with its obligations within two months.

8 By letter of 26 November 1996 the Spanish authorities informed the Commission that they would shortly adopt the measures required in the reasoned opinion.

9 Having received no notification of such measures, the Commission brought the present proceedings.

10 In its reply to the defence lodged in this case, the Commission acknowledged that it had received six codes of good agricultural practice out of a total of 17 and considered that it was therefore not necessary for the Court to rule on the allegation of failure to comply with the obligation to establish and notify the codes of good agricultural practice as regards the autonomous communities of Madrid, Navarra, Andalucia, Murcia, Valencia and Cantabria.

11 In its defence the Kingdom of Spain denies, first, that there has been any failure on its part to fulfil obligations. In its view, that charge implies an intention on its part not to comply with its obligations, which is not the case here. The delay in implementing the Directive was due, on the one hand, to technical difficulties involved in its implementation and, on the other, to the fact that the State and the autonomous communities have concurrent powers in the fields covered by the Directive.

12 Second, the Kingdom of Spain points out, in its rejoinder, that eight autonomous communities in respect of which the allegation concerning Article 4 of the Directive has been maintained, namely Castile and León, Galicia, the Basque region, Rioja, Aragon, Estremadura, Asturias and the Balearic Islands, have adopted codes

of good agricultural practice and that those codes have been forwarded to the Commission. Furthermore, seven autonomous communities, namely Aragon, the Balearic Islands, the Canary Isles, Castile and León, Navarra, Valencia and Castile-La-Mancha have designated the vulnerable zones in accordance with Article 3(2) of the Directive, whilst five others, Asturias, Galicia, Madrid, Murcia and Cantabria, have stated that no such zones exist in their territory. Finally, the autonomous community of Andalucia has also designated vulnerable zones but has not yet notified the details.

13 The Kingdom of Spain considers that it is therefore not necessary, with respect to communities which have fulfilled their duties, for the Court to rule on the failure to fulfil the obligations to draw up codes of good agricultural practice and to designate the vulnerable zones.

14 As regards the absence of any intention on the part of the Kingdom of Spain not to fulfil its obligations under Articles 3 and 4 of the Directive, it must be pointed out that the procedure laid down in Article 169 of the Treaty is based on the objective finding that a Member State has failed to fulfil its obligations under the Treaty or secondary legislation (see, to that effect, Case 301/81 *Commission* v *Belgium* [1983] ECR 467, paragraph 8).

15 When such a finding has been made, as in the present case, it is irrelevant whether the failure to fulfil obligations is the result of intention or negligence on the part of the Member State responsible, or of technical difficulties encountered by it.

16 In that respect, the Court has held that, if the period allowed for the implementation of a directive proves to be too short, the only means of action compatible with Community law available to the Member State concerned consists in taking the appropriate initiatives within the Community in order to obtain the necessary extension of the period by the competent-Community institution (*Commission* v *Belgium*, paragraph 11).

17 As regards, in particular, the argument based on the fact that the delay at issue resulted, *inter alia*, from the fact that the State and the autonomous communities have concurrent powers, it must be pointed out that, according to settled case-law, a State may not plead provisions and practices or circumstances existing in its internal legal system in order to justify a failure to comply with the obligations and time-limits laid down in a directive (Case C-259/94 *Commission* v *Greece* [1995] ECR I-1947, paragraph 5).

18 As to the Kingdom of Spain's assertion that the Court should not rule on the charges of failure to fulfil the obligation to draw up codes of good agricultural practice and to designate vulnerable zones in so far as those charges concern the autonomous communities mentioned for the first time in its rejoinder, it must be pointed out that, according to settled case-law, the Court cannot take account of measures adopted by a Member State after the commencement of an action for failure to fulfil its obligations in order to comply with those obligations (Case 291/84 *Commission* v *Netherlands* [1987] ECR 3483, paragraph 15).

19 It follows from all the foregoing considerations that, by failing to designate the zones considered to be vulnerable and to notify the Commission of those designations and by failing to establish the codes of good agricultural practice for the autonomous communities other than Andalucia, Cantabria, Madrid, Murcia, Navarra and Valencia and to notify the Commission thereof, the Kingdom of Spain has failed to fulfil its obligations under Articles 3 and 4 of the Directive.

## Costs

20 Under Article 69(2) of the Rules of Procedure, the unsuccessful party is to be ordered to pay the costs. Since the Kingdom of Spain has been unsuccessful, it must be ordered to pay the costs.

On those grounds,

THE COURT (Sixth Chamber)

hereby:

**1) Declares that by failing to designate the zones considered to be vulnerable and to notify the Commission of those designations and by failing to establish the codes of good agricultural practice for the autonomous communities other than Andalucia, Cantabria, Madrid, Murcia, Navarra and Valencia and to notify the Commission thereof, the Kingdom of Spain has failed to fulfil its obligations under Articles 3 and 4 of Council Directive 91/676/EEC of 12 December 1991 concerning the protection of waters against pollution caused by nitrates from agricultural sources;**

**2) Orders the Kingdom of Spain to pay the costs.**

Ragnemalm Mancini Murray

Hirsch Ioannou

Delivered in open court in Luxembourg on 1 October 1998.

R. Grass H. Ragnemalm

Registrar President of the Sixth Chamber