JUDGMENT OF THE COURT (Sixth Chamber)
25 February 1999 *

In Case C-195/97,

Commission of the European Communities, represented by Paolo Stancanelli, 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

Italian Republic, represented by Professor Umberto Leanza, Head of the Legal Department in the Ministry of Foreign Affairs, acting as Agent, assisted by Pier Giorgio Ferri, Avvocato dello Stato, with an address for service in Luxembourg at the Italian Embassy, 5 Rue Marie-Adélaïde,

defendant,

APPLICATION for a declaration that, by failing to adopt and communicate within the prescribed period the provisions necessary to transpose into domestic law 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), and in particular by failing to comply with the obligation laid down in Article 3(2) of the Directive, the Italian Republic has failed to fulfil its obligations under Community law,

* Language of the case: Italian.

THE COURT (Sixth Chamber),

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

Advocate General: P. Léger,
Registrar: R. Grass,

having regard to the report of the Judge-Rapporteur,

after hearing the Opinion of the Advocate General at the sitting on 12 November 1998,

gives the following

Judgment

1 By application lodged at the Court Registry on 20 May 1997, the Commission of the European Communities brought an action under Article 169 of the EC Treaty for a declaration that, by failing to adopt and communicate to it within the prescribed period the provisions necessary to transpose into domestic law 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'), and in particular by failing to comply with the obligation laid down in Article 3(2) of the Directive, the Italian Republic has failed to fulfil its obligations under Community law.

2 Article 12(1) of the Directive provides that the Member States are, first, to bring into force the laws, regulations and administrative provisions necessary to comply

with it within two years of its notification and, secondly, forthwith to inform the Commission thereof. Since the Directive was notified to the Member States on 19 December 1991, that time-limit for implementation expired on 19 December 1993.

3 Under Article 3(2) of the Directive, the Member States are, within the same period, to designate as vulnerable zones all known areas of land in their territories which drain into waters affected by pollution and waters which could be affected by pollution and to notify the Commission of that initial designation within six months.

4 Article 3(5) provides that Member States are to be exempt from the obligation to identify specific vulnerable zones where they consider the whole of their national territory to be vulnerable and establish and apply action programmes with the objective of reducing and preventing water pollution caused by nitrates from agricultural sources throughout that territory.

5 Under Article 4 of the Directive, with the aim of providing for all waters a general level of protection against pollution, the Member States were to establish before 19 December 1993 a code or codes of good agricultural practice, to be implemented by farmers on a voluntary basis.

6 Since the Commission had not received any communication relating either to the transposition of the Directive into Italian law, or to the designation of specific vulnerable zones or the intention to designate the whole of the national territory as a

vulnerable zone pursuant to Article 3(5), and had no other information enabling it to conclude that the Italian Republic had complied with its obligations, it gave the Italian Government formal notice, by letter of 10 July 1995, to submit its observations within two months.

7 Since it had received no communication from the Italian Republic, the Commission sent it a reasoned opinion on 26 July 1996 calling upon it to adopt the measures necessary to comply with it within two months of its notification.

8 By letter of 20 January 1997 the Italian Republic, while admitting that it had not yet adopted a specific measure to implement the Directive, maintained that it had, in all essentials, fulfilled the obligations laid down in it, in particular those arising under Articles 3(2) and 4.

9 In the light of the information supplied by the Italian Republic, the Commission did not pursue its complaints in respect of failure to implement Article 4 of the Directive.

10 By contrast, in respect of Articles 12 and 3(2) of the Directive, the Commission considered that the Italian Republic had still not met its obligations, and consequently decided to bring the present action.

11 The Commission claims that the Italian Republic has failed to identify the waters affected by pollution and waters which could be affected by pollution in accordance with Article 3(1). It points out that, under Article 3(5) of the Directive, the Italian Republic would have been exempt from the obligation to identify vulnerable zones if it had considered the whole of its national territory to be vulnerable.

12 The Italian Republic states that, once the reasoned opinion had been sent, it informed the Commission that it had adopted a series of measures designed to implement the Directive, and that it intended to adopt, under powers delegated by the Italian Parliament, a legislative decree containing complete rules on the subject covered by the Directive.

13 The Commission maintains that the main objective of the Directive is to reduce and prevent water pollution caused or induced by nitrates from agricultural sources. It claims that the correct implementation of the Directive requires a logical order to be followed. First, Member States are to identify the waters and zones at risk of pollution. Secondly, they are to adopt and apply the measures necessary to combat the pollution thus determined. The Commission states that the Italian Republic completely failed to identify, at the outset, the vulnerable zones which must be defined before the measures designed to reduce or prevent water pollution prescribed in Articles 4 and 5 can be adopted.

14 It is apparent from Articles 3 and 5 of the Directive that the Member States are to comply with the obligation to identify vulnerable zones before adopting measures to implement Article 5, which has the objective of reducing and preventing water pollution. Under Article 3(5) Member States are to be exempt from the obligation to identify specific vulnerable zones only where they establish and apply the action programmes referred to in Article 5 to the whole of their national territory within the period prescribed.

15 The Italian Government does not deny that no identification of vulnerable zones within the meaning of Article 3(2) of the Directive has yet been carried out.

16 It states in the rejoinder that the documentation relating to the measures adopted to implement Article 5 of the Directive is on its way to the Commission.

17 Without its being necessary to examine those measures, it is sufficient to observe that it is clear from the file that such measures have not been adopted within the period prescribed by the Directive.

18 It follows from all the foregoing that the measures necessary to ensure the correct implementation of the Directive have not been adopted or communicated to the Commission within the period prescribed.

19 In those circumstances, it must be held that, by failing to adopt and communicate to the Commission within the prescribed period the laws, regulations and administrative provisions necessary to implement the Directive, and in particular by failing to comply with the obligation laid down in Article 3(2) thereof, the Italian Republic has failed to fulfil its obligations under Article 12(1) 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 if they have been applied for in the successful party's pleadings. Since the Italian Republic has been unsuccessful, it must, as requested by the Commission, be ordered to pay the costs.

On those grounds,

THE COURT (Sixth Chamber),

hereby:

1. **Declares that, by failing to adopt and communicate to the Commission within the prescribed period the laws, regulations and administrative provisions necessary to implement Council Directive 91/676/EEC of 12 December 1991 concerning the protection of waters against pollution caused by nitrates from agricultural sources, and in particular by failing to comply with the obligation laid down in Article 3(2) thereof, the Italian Republic has failed to fulfil its obligations under Article 12(1) thereof.**

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

Kapteyn Mancini Murray

Ragnemalm Ioannou

Delivered in open court in Luxembourg on 25 February 1999.

R. Grass P. J. G. Kapteyn

Registrar President of the Sixth Chamber