JUDGMENT OF THE COURT

18 June 1996 *

In Case C-303/94,

European Parliament, represented by Gregorio Garzón Clariana, Jurisconsult, assisted by Johann Schoo and Kieran Bradley, of its Legal Service, acting as Agents, with an address for service in Luxembourg at the Secretariat General of the European Parliament, Kirchberg,

applicant,

v

Council of the European Union, represented by Ramon Torrent, Director of its Legal Service, and Diego Canga Fano, of the same service, acting as Agents, with an address for service in Luxembourg at the office of Bruno Eynard, Manager of the Legal Directorate of the European Investment Bank, 100 Boulevard Konrad Adenauer,

defendant,

* Language of the case: French.

APPLICATION for annulment of Council Directive 94/43/EC of 27 July 1994 establishing Annex VI to Directive 91/414/EEC concerning the placing of plant protection products on the market (OJ 1994 L 227, p. 31),

THE COURT,

composed of: G. C. Rodríguez Iglesias, President, C. N. Kakouris, D. A. O. Edward and J.-P. Puissochet (Rapporteur) (Presidents of Chambers), G. F. Mancini, P. J. G. Kapteyn, C. Gulmann, J. L. Murray, P. Jann, L. Sevón and M. Wathelet, Judges,

Advocate General: G. Tesauro,
Registrar: D. Louterman-Hubeau, Principal Administrator,

having regard to the Report for the Hearing,

after hearing oral argument from the parties at the hearing on 19 March 1996,

after hearing the Opinion of the Advocate General at the sitting on 30 April 1996,

gives the following

Judgment

1 By application lodged at the Court Registry on 14 November 1994, the European Parliament applied pursuant to Article 173 of the EC Treaty for annulment of

Council Directive 94/43/EC of 27 July 1994 establishing Annex VI to Directive 91/414/EEC concerning the placing of plant protection products on the market (OJ 1994 L 227, p. 31, hereinafter 'the contested directive').

2 Council Directive 91/414/EEC of 15 July 1991 concerning the placing of plant protection products on the market (OJ 1991 L 230, p. 1, hereinafter 'the basic directive'), adopted on the basis of Article 43 of the Treaty, is intended to lay down the rules applicable by the Member States in relation to the authorization, marketing, use and control of plant protection products.

3 Article 4(1) of that directive requires the Member States to ensure that a plant protection product is not authorized unless certain conditions are fulfilled. One such condition is that, in implementation of the uniform principles laid down in Annex VI, it must be established that the product has no harmful effect on human or animal health, either directly or indirectly, or on groundwater and has no unacceptable influence on the environment, particularly in relation to the contamination of water, including drinking water and groundwater. Article 10(1) of the same directive lays down the rules for giving effect to the principle of mutual recognition of authorizations granted by the Member States. Finally, Article 18(1) provides: 'The Council, acting by a qualified majority on a proposal from the Commission, shall adopt the "uniform principles" referred to in Annex VI'.

4 The contested directive, adopted on the basis of the latter provision, establishes the content of Annex VI to the basic directive, which lays down the 'uniform principles for evaluation and authorization of plant protection products'.

5 According to the fifth recital in the preamble to that directive, its provisions on the protection of water 'are without prejudice to Member States' obligations under the Directives concerning the protection of water, and in particular Directives

75/440/EEC, 80/68/EEC and 80/778/EEC'. The following recitals make it clear that a review of those directives is necessary and that, pending such review, the provisions of the contested directive concerning the protection of water are transitional in nature. In particular, it will be necessary to re-examine the provisions of point 2.5.1.2(b) of Part C of Annex VI as soon as models validated at Community level enable the foreseeable concentration in groundwater after use of plant protection products to be estimated precisely.

6 Annex VI, the content of which was established by the contested directive, comprises an introduction (A), a part concerning evaluation of the information notified in support of applications for authorization (B) and, finally, a part devoted to the decision-making process (C).

7 In part B, point 2.5.1.2 states that: 'Member States shall evaluate the possibility of the plant protection product reaching the groundwater intended to produce drinking water under the proposed conditions of use'. If that possibility exists, the Member States must evaluate its consequences having regard to certain information, using a suitable calculation model validated at Community level, or, if no such model exists, basing their evaluation on the results of mobility and persistence-in-soil studies, as provided for in Annexes II and III.

8 In part C, point 2.5.1.2 comprises four paragraphs dealing respectively with (a) the conditions to be met for an authorization to be granted, (b) the possibility of issuing a conditional authorization for a limited period of not more than five years, (c) the possibility of issuing a further conditional authorization and, finally, (d) the possibility of introducing at any time appropriate conditions or restrictions having regard to local conditions.

9 Under C 2.5.1.2(a), an authorization may be granted only if it appears that, after use of the plant protection product, the foreseeable concentration of the active substance or of relevant metabolites or breakdown or reaction products in groundwater intended for the production of drinking water does not exceed the lower of the following concentrations: the maximum permissible concentration laid down by Council Directive 80/778/EEC of 15 July 1980 relating to the quality of water intended for human consumption (OJ 1980 L 229, p. 11); the maximum concentration laid down by the Commission when including the active substance in Annex I (failing which the concentration corresponding to one-tenth of the acceptable daily intake when that substance was so included).

10 However, C 2.5.1.2(b) states that, where the latter concentration is greater than the maximum acceptable concentration laid down by Directive 80/778, a conditional authorization, which is not an authorization within the meaning of Article 10(1) of the basic directive and which is for a limited period of not more than five years, may be issued if certain conditions are fulfilled. Those conditions vary according to whether or not monitoring data are available.

11 If they are not available, the evaluation must show that the foreseeable concentration does not exceed the maximum concentration determined by the Commission when including the active substance in Annex I (or that corresponding to one-tenth of the acceptable daily intake established when that substance was so included) and it must be ensured that an adequate monitoring programme is introduced or continued in the Member State, so that it can be estimated whether the maximum permissible concentration determined by Directive 80/778 will be exceeded. Where appropriate, restrictions on the use of the product are imposed, having regard to the agricultural, plant-health and environmental, including climatic, conditions in the envisaged area of use. If necessary, the conditional authorization is amended or withdrawn where monitoring results show that, despite the imposition of those restrictions, the concentration will exceed the maximum permissible concentration laid down by Directive 80/778.

12 If monitoring data are available and support the conclusion that there is no risk that the concentration will exceed the maximum concentration laid down by the Commission when including the active substance in Annex I, the significance of the risk of the maximum permissible concentration fixed by Directive 80/778 being exceeded must first be investigated and it must be ensured that an adequate programme is introduced or continued in the Member State so as to make sure that the latter concentration is not exceeded.

13 Under C 2.5.1.2(c), a further conditional authorization may be issued for a single period of not more than five years if the monitoring results show that the concentration has been reduced to a level approaching the maximum permissible concentration fixed by Directive 80/778 and if it is considered that other amendments could ensure that the foreseeable concentration will be reduced below that maximum concentration.

14 Finally, pursuant to C 2.5.1.2(d), a Member State may at any time introduce appropriate conditions or restrictions on the use of the product, having regard to local agricultural, plant-health and environmental, including climatic, conditions, in order to comply with the maximum permissible concentration determined by Directive 80/778.

15 Claiming that its prerogatives have been infringed, the Parliament puts forward, in support of its application, three pleas in law, alleging that the contested directive has unlawfully modified certain obligations imposed on the Member States by the basic directive, that it unlawfully modified other obligations imposed by Directive 80/778, and, finally, that it contains an inadequate or incorrect statement of the reasons on which it is based.

16 The Council, which entertains certain doubts as to the admissibility of the application, considers that the Parliament's arguments should be rejected.

Admissibility

17 Pursuant to the third paragraph of Article 173 of the Treaty, the Parliament may bring an action before the Court for the annulment of an act of another institution provided that it does so in order to protect its prerogatives. The Court has held that that condition is satisfied where the Parliament indicates in an appropriate manner the substance of the prerogative to be safeguarded and how that prerogative is allegedly infringed (Case C-316/91 *Parliament* v *Council* [1994] ECR I-625, paragraph 13).

18 By virtue of those criteria, the action must be declared inadmissible to the extent to which it is founded on infringement of Article 190 of the Treaty. In alleging that the contested provisions are inadequately or incorrectly reasoned for the purposes of that article, the Parliament has failed to provide any relevant indication as to how that infringement, assuming that it has been committed, is such as to impair its own prerogatives (see Case C-156/93 *Parliament* v *Commission* [1995] ECR I-2019, paragraph 11).

19 On the other hand, the right to be consulted in accordance with a provision of the Treaty is a prerogative of the Parliament (see *Parliament* v *Council*, cited above, paragraph 16) and the Parliament maintains that certain provisions of the contested directive have modified the obligations imposed on the Member States by the basic directive and by Directive 80/778, which are based respectively on Article 43 and Articles 100 and 235 of the Treaty — which provide that the Parliament must be consulted.

20 Thus, in so far as it criticizes the fact that the Council adopted those provisions in breach of that obligation, the purpose of the action is to demonstrate that the Parliament's prerogatives have been encroached upon. The action is therefore admissible.

Substance

21 The Parliament maintains in particular that Annex VI established by the contested directive, by referring, in B 2.5.1.2 and C 2.5.1.2, only to 'groundwater intended for the production of drinking water' and by also allowing the issue of a conditional authorization for a plant protection product whose foreseeable concentration exceeds the maximum permissible concentration, has changed the degree of protection of groundwater laid down by the basic directive. In its view, such a change cannot lawfully be made without following the procedure laid down by Article 43 of the Treaty, under which the latter directive was adopted and which provides for mandatory consultation of the Parliament.

22 The Council contends that, although it considered that very detailed criteria should be laid down for groundwater intended for the production of drinking water, it did not consider that harmonization of the criteria to be applied in relation to the effects on other groundwater was necessary. In its view, the mere fact that an implementing directive is not exhaustive cannot render it illegal. Only if it exceeded the limits to which implementation was made subject by the basic directive or if it contradicted the provisions of the latter would the contested directive be illegal.

23 As the Court has already held (in particular in Case 46/86 *Romkes* v *Officier van Justitie for the District of Zwolle* [1987] ECR 2671, paragraph 16, and in *Parliament* v *Commission*, cited above, paragraph 18, the Council cannot be required to draw up all the details of regulations or directives concerning the common agricultural policy according to the procedure laid down in Article 43 of the Treaty. It is sufficient for the purposes of that provision that the essential elements of the matter to be dealt with have been adopted in accordance with the procedure laid down by that provision, and the provisions implementing the basic regulations or directives may be adopted according to a different procedure, as provided for by those regulations or directives. Nevertheless, an implementing directive such as the contested directive, adopted without consultation of the Parliament, must respect the provisions enacted in the basic directive after consultation of the Parliament.

24 In this case, although the basic directive states, in the third recital in its preamble, that the use of plant protection products is one of the most important ways of protecting plants and plant products and of improving agricultural production, it also states, in the fourth recital, that such use may involve risks for humans, animals and the environment, and it seeks, as is apparent from the recitals that follow, to introduce, in view of those risks, uniform rules on the conditions and procedures for authorization of such products.

25 According to the ninth recital in the preamble to that directive, those procedures are to ensure a high standard of protection, which, in particular, must prevent the authorization of plant protection products whose risks to health, groundwater and the environment have not been appropriately investigated; moreover, the protection of human and animal health and the environment should take priority over the objective of improving plant production. The tenth recital adds that it is necessary to make sure that the products in question 'have ... no unacceptable influence on the environment in general and, in particular, no harmful effect on human or animal health or on groundwater'.

26 The authorization rules are laid down in particular in Article 4(1) of the basic directive which, as pointed out in paragraph 3 of this judgment, requires the Member States to ensure that a plant protection product is not authorized unless certain conditions are fulfilled and refers in that connection to the 'uniform principles' mentioned in Annex VI, the content of which must be established by the Council in accordance with the procedure provided for in Article 18.

27 With regard more particularly to the protection of health, groundwater and the environment, Article 4(1)(b) of the basic directive provides that the Member States are not to authorize a plant protection product unless, in accordance with the abovementioned uniform principles, it is established that that product has no harmful effect on human or animal health, either directly or indirectly, or on

groundwater and has no unacceptable influence on the environment, particularly in relation to the contamination of water. As is clear from the wording of Article 4(1)(b)(iv) and (v), that obligation relates to both drinking water and groundwater, without limiting the latter to groundwater intended for human consumption.

28 So, whilst the basic directive pursues the aim of improving agricultural production through the use of plant protection products, it also requires, taken as a whole, respect for the environment in general, and of groundwater in particular, as an essential precondition for the authorization of such products.

29 The contested directive, for its part, states, in the third recital in its preamble, that the uniform principles for evaluation and authorization of plant protection products 'have to be laid down for each of the different requirements provided for in Article 4(1)(b), (c), (d) and (e)' of the basic directive. However, in Annex VI, in which those principles are established, points B 2.5.1.2 and C 2.5.1.2, concerning groundwater, refer only to water intended for the production of drinking water. Moreover, although those provisions are, as pointed out in paragraph 5 of this judgment, without prejudice to the obligations deriving in particular from Directive 80/778 and although they also refer expressly to the maximum permissible concentration determined by that directive, they nevertheless allow, under the conditions set out in point C 2.5.1.2 (b) and (c), the issue of a conditional authorization for a plant protection product whose foreseeable concentration exceeds that maximum concentration.

30 Contrary to the Council's contention, the fact that the contested directive is merely incomplete on one of the points relating to the principles laid down by the basic directive, and does not thereby go beyond the limits to which the implementation of those principles is subject, is not sufficient to defeat the plea that it is

illegal in the light of the basic directive. For that to be the case, it would also be necessary for the implementing directive to comply, as pointed out in paragraph 23 of this judgment, with the provisions enacted in the basic directive after consultation with the European Parliament and for it not to modify the scope of the obligations defined by that directive.

31 By not taking account of the effects which plant protection products may have on all groundwater, the contested directive specifically failed to observe one of the essential elements of the matter expressly laid down by the basic directive. As to that, it need merely be pointed out that, as indicated in paragraph 25 of this judgment, the latter directive seeks in particular to ensure a high standard of protection so as to preclude any unacceptable influence of the products in question on the environment in general and, in particular, any harmful effect on human or animal health or on groundwater.

32 Moreover, the procedure provided for in point C 2.1.5.2 (b) and (c) of the annex to the contested directive allows the issue of a conditional authorization, for a period which may extend to ten years, for plant protection products whose foreseeable concentration in groundwater intended for the production of drinking water exceeds the maximum permissible concentration laid down in a reference provision. Even if those provisions are presented as transitional provisions, they manifestly affect, as the Advocate General pointed out in paragraph 20 of his Opinion, the scope of the principles defined in Article 4(1)(b)(iv) and (v) of the basic directive, according to which a plant protection product must not be authorized unless it is established that it has no harmful effect on human or animal health or on groundwater and that it has no unacceptable influence on the environment, in particular as regards the contamination of water.

33 The Parliament's assertion that the contested directive has modified the scope of the obligations imposed on the Member States by the basic directive, without following the legislative procedure prescribed by the Treaty, which calls for it to be consulted, is therefore well founded. The contested measure must accordingly be annulled.

Costs

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

On those grounds,

THE COURT

hereby:

1. **Annuls Council Directive 94/43/EC of 27 July 1994 establishing Annex VI to Directive 91/414/EEC concerning the placing of plant protection products on the market;**

2. **Orders the Council to pay the costs.**

Rodríguez Iglesias Kakouris Edward

Puissochet Mancini Kapteyn

Gulmann Murray Jann

Sevón Wathelet

Delivered in open court in Luxembourg on 18 June 1996.

R. Grass

Registrar

G. C. Rodríguez Iglesias

President