OPINION OF ADVOCATE GENERAL LÉGER

delivered on 16 May 2000 [1]

1. In this case, brought under Article 173 of the EC Treaty (now, after amendment, Article 230 EC), the Kingdom of Spain seeks the annulment of Council Decision 97/825/EC of 24 November 1997 [2] concerning the conclusion of the Convention on cooperation for the protection and sustainable use of the river Danube. [3] The Council is criticised for having adopted this decision, which falls within the common policy on the environment, on the basis of the wrong Treaty provision.

I — Law

A — *The Treaty*

2. Article 130r of the EC Treaty (now, after amendment, Article 174 EC) defines the scope of the Community's policy in the field of the environment and sets out a series of objectives (paragraph 1), principles (paragraph 2) and criteria (paragraph 3) which the Community legislature is required to have regard to in implementing this policy. [4]

3. According to Article 130r(1) of the Treaty, the objectives of this policy are as follows:

'— preserving, protecting and improving the quality of the environment;

— protecting human health;

— prudent and rational utilisation of natural resources;

— promoting measures at international level to deal with regional or worldwide environmental problems'.

1 — Original language: French.

2 — Hereafter 'Decision 97/825' or 'the contested decision'.

3 — OJ 1997 L 342, p. 18, hereafter 'the Convention'.

4 — See Case C-284/95 *Safety Hi-Tech* [1998] ECR I-4301, paragraph 36, and Case C-341/95 *Bettati* [1998] ECR I-4355, paragraph 34.

4. Article 130r(4) of the Treaty sets out the scope of the Community's external competence concerning the environment. It establishes the principle of concurrent competence on the part of the Member States and the Community to enter into international environmental agreements with third countries and relevant international bodies. [5] It also lays down the procedure to be followed for the adoption of such measures.

5. It reads as follows:

'Within their respective spheres of competence, the Community and the Member States shall cooperate with third countries and with the competent international organisations. The arrangements for Community cooperation may be the subject of agreements between the Community and the third parties concerned, which shall be negotiated and concluded in accordance with Article 228.'

6. Article 228 of the EC Treaty (now, after amendment, Article 300 EC), which is the general provision concerning the conclusion of agreements between the European Community and one or more States or international organisations, sets out all the procedural rules for the negotiation, conclusion and implementation of such agreements. [6] It is, in particular, to be applied to the exclusion of all other provisions when the agreements in question concern the common policy defined in Article 130r of the Treaty.

7. Article 228(2) and (3), first subparagraph, of the Treaty, provides as follows:

'2. Subject to the powers vested in the Commission in this field, the agreements shall be concluded by the Council, acting by a qualified majority on a proposal from the Commission. The Council shall act unanimously when the agreement covers a field for which unanimity is required for the adoption of internal rules, and for the agreements referred to in Article 238.

3. The Council shall conclude agreements after consulting the European Parliament, except for the agreements referred to in Article 113(3), including cases where the agreement covers a field for which the procedure referred to in Article 189b or that referred to in Article 189c is required for the adoption of internal rules. The European Parliament shall deliver its

5 — In particular those falling within the United Nations Organisation, the Council of Europe, or certain permanent commissions set up to manage specific ecological areas, such as the International Commission for the Protection of the Rhine against Pollution.

6 — This article is not, however, relevant to agreements entered into in the fields of monetary policy (see Article 109 of the EC Treaty (now Article 111 EC)) and commercial policy (see Article 113 of the EC Treaty (now, after amendment, Article 133 EC)).

opinion within a time-limit which the Council may lay down according to the urgency of the matter. In the absence of an opinion within that time-limit, the Council may act.'

8. Article 130s of the EC Treaty (now, after amendment, Article 175 EC) constitutes the specific legal basis for the Community's competence on the environment. It sets out the institutions charged with defining this policy, and the procedure to be adopted for making decisions on the subject. Since the entry into force of the Treaty on European Union, two separate procedures may be followed for the adoption of measures falling within Article 130r. [7]

9. Article 130s(1) and (2) provides as follows:

'1. The Council, acting in accordance with the procedure referred to in Article 189c and after consulting the Economic and Social Committee, shall decide what action is to be taken by the Community in order to achieve the objectives referred to in Article 130r.

2. By way of derogation from the decision-making procedure provided for in paragraph 1 and without prejudice to Article 100a, the Council, acting unanimously on a proposal from the Commission and after consulting the European Parliament and the Economic and Social Committee, shall adopt:

— provisions primarily of a fiscal nature;

— measures concerning town and country planning, land use with the exception of waste management and measures of a general nature, and management of water resources;

— measures significantly affecting a Member State's choice between different energy sources and the general structure of its energy supply.

The Council may, under the conditions laid down in the preceding subparagraph, define those matters referred to in this paragraph on which decisions are to be taken by a qualified majority.'

7 — The Single European Act established a single procedure. Article 130s provided that: 'The Council, acting unanimously on a proposal from the Commission and after consulting the European Parliament and the Economic and Social Committee, shall decide...'; on the entry into force of the Treaty of Amsterdam Article 175(1) EC was amended and it now provides that the ordinary decision-making procedure for 'environmental' policy falls within Article 251 EC.

B — *The contested decision*

10. The contested decision was adopted on the basis of Article 130s(1) in conjunction with Article 228(2), first sentence, and (3), first subparagraph, of the Treaty in accordance with the Commission's proposal for a Council decision on the conclusion, on behalf of the Community, of the Convention on cooperation for the protection and sustainable use of the Danube. [8] It is the act by which the Council approved on behalf of the European Community the Convention signed at Sofia, Bulgaria, on 29 June 1994. [9]

11. The Convention sets out 'to establish a framework for bilateral or multilateral cooperation to protect the marine environment, to prevent and control pollution in the river Danube and to assure the sustainable use of the water resources of countries through which the river Danube flows'. [10]

12. The Council concluded the Convention in order to enable the Community to help to achieve the objectives set out in Article 130r of the Treaty. [11]

8 — OJ 1996 C 288, p. 19.

9 — Article 1 of Decision 97/825.

10 — *Ibidem*, third recital in the preamble.

11 — *Ibidem*, eighth recital.

C — *The Convention*

13. Article 2(1), (2) and (3) of the Convention defines the objectives of the Contracting Parties. These are, in summary, to maintain water quality in the Danube for the benefit of all countries through which it flows, and, as far as possible, the improvement and rational utilisation of this natural resource.

14. Article 2(7) provides that the Contracting Parties have the right to adopt and implement safeguard measures which are more stringent than those resulting from the provisions of the Convention.

15. The scope of the Convention is defined in Article 3. Article 3(2) states that the provisions of the Convention shall apply, in particular, to planned activities and ongoing measures [12] 'as far as they cause, or are likely to cause, transboundary impacts'.

12 — Such as the discharge of waste waters, heat discharge, planned activities and measures in the field of water construction works, the operation of existing hydrotechnical constructions, in particular, reservoirs and water power plants, planned activities and measures for the purposes of water use, such as water power utilisation, water transfer and withdrawal, the handling of substances hazardous to water...

16. Article 5(1) of the Convention states that the Contracting Parties shall 'provide for the domestic preconditions and basis required in order to ensure efficient water quality protection and sustainable water use, and thereby also to prevent, control and reduce transboundary impact.'

17. Article 6 sets out the specific measures provided for by the Convention for the protection of the Danube's water resources.

18. Article 7 of the Convention defines the objectives and quality criteria for the reduction of discharges of hazardous substances, whether from point or non-point sources, [13] applicable to the industrial and agricultural sectors, and to particular industries. Article 7 also provides that municipal waste water shall be subject to specific treatment in order to limit the emission of hazardous substances.

19. Article 9 of the Convention provides that: 'On the basis of their domestic activities, the Contracting Parties shall cooperate in the field of monitoring and assessment', in particular in the fields of 'river quality, emission control, flood forecast and water balance'. [14]

20. Articles 10 to 17 contain provisions concerning, respectively, reporting obligations; consultation; exchange of information; protection of information supplied; informing the public; research and development; communication, warning and alarm systems and emergency plans; and mutual assistance.

21. Article 18 sets up an international commission charged with drafting proposals and recommendations to the Contracting Parties with a view to implementing the objectives and provisions of the Convention.

II — Procedure and forms of order sought

22. The present action was commenced by application lodged at the Court Registry on 16 February 1998.

13 — By 'point or non-point sources of water pollution' is meant 'the sources of pollutants and nutrients the input of which to waters is caused either by locally determined discharges (point source) or by diffuse effects being widespread over the catchment areas (non-point sources)' (Article 1(f)).

14 — The term 'water balance' denotes 'the relationship characterising the natural water [environment] of an entire river basin as to its components (precipitation, evaporation, surface and underground run-off). In addition a component of current manmade effects originating from water use and influencing water quantity is included' (Article 1(g)).

23. The Kingdom of Spain asks the Court to annul Decision 97/825 and order the Council to pay the costs.

24. The Council asks that the action be dismissed and that the Kingdom of Spain be ordered to pay the costs. Alternatively, if the application is upheld, the Council asks that the effects of the contested decision be maintained until such time as a new decision can be adopted.

25. The French Republic, the Commission, the Portuguese Republic and the Republic of Finland were granted leave to intervene in support of the Council's submissions. They ask that the application be dismissed, and that the Kingdom of Spain be ordered to pay the costs. [15]

III — Pleas in law and arguments of the parties

A — *The Kingdom of Spain*

26. The Kingdom of Spain states that it is in favour of the approval of the Convention by the Community, [16] and recognises that the contested decision falls within the scope of Article 130r of the Treaty. [17] It challenges, however, the procedure used to adopt Decision 97/825. It takes the view that it should have been adopted in accordance with the procedure laid down in Article 130s(2) in conjunction with Article 228(2), second sentence, and (3), first subparagraph, and not on the basis of Article 130s(1) in conjunction with Article 228(2), first sentence, and (3), first subparagraph. The sole plea in law which the Kingdom of Spain advances in support of its application therefore concerns the allegedly incorrect choice of procedure by the Council for the adoption of Decision 97/825.

27. In support of this plea, the Kingdom of Spain develops in substance two arguments.

28. *First*, it asserts that Article 130s(1) of the Treaty lays down the general procedure in the field of the policy defined by Article 130r of the Treaty, whilst Article 130s(2) lays down the special procedure which must be followed when the Community decides to adopt measures affecting the specific matters set out in that provision.

15 — With the exception of the Republic of Finland.

16 — Indeed, the Council stated, without being contradicted on the point, that Decision 97/825 was adopted by the unanimous vote of its members.

17 — Counsel for the Spanish Government specifically confirmed this during the oral hearing.

29. The Spanish Government points out that Article 130r(1) of the Treaty lists the objectives of the Community policy in the field of the environment in general terms. The purpose of this policy is always — and by definition — to protect the environment and to improve the quality of it. The stated objectives include 'the prudent and rational utilisation of natural resources'. The Spanish Government observes that the measures concerning the preservation and improvement of natural resources which fall within Article 130r(1) of the Treaty are also set out in general terms.

30. It concludes that Article 130s(1) of the Treaty is the appropriate provision when the Community decides to adopt general measures in favour of the environment. When embarking on such general measures the Council follows the procedure laid down in Article 189c of the EC Treaty (now Article 252 EC). [18]

31. Article 130s(2), on the other hand, lays down the special procedure to be followed when the Community decides to adopt measures specifically envisaged by that provision. These include, without any qualification or exception, the 'management of water resources'. Article 130s(2) therefore provides for a specific procedure distinct from the general procedure laid down by Article 130s(1) of the Treaty.

32. The Spanish Government submits that the framers of the Treaty so drafted Article 130s(2) to emphasise that water, by its nature a natural resource absolutely essential to human life, merits special attention. It considers that when action founded on Article 130r of the Treaty has a bearing on the management of this natural resource, it must be adopted by means of the special procedure provided for therein. Community acts having a bearing on the management of this particular natural resource cannot therefore be adopted without the unanimous vote of the members of the Council.

33. Since Article 130s(2) of the Treaty cannot be interpreted as a derogating scheme, the Spanish Government asserts, the legal principle that derogations to a general rule are to be interpreted and applied strictly has no bearing in the present case. On the contrary, since the provision lays down a special procedure, it must be the preferred one and is perfectly susceptible of a broad interpretation.

34. *Secondly*, the Kingdom of Spain accepts that the case-law of the Court concerning the determination of the appropriate legal basis for a measure suggests that recourse should be had to a single legal

18 — Commonly known as the 'cooperation procedure'.

base when the content and aims of the measure in question relate principally to one field of action (any effects on other policies being only incidental) and to have recourse to a twofold legal basis when the two aspects are equally essential. [19] However, the Spanish Government considers that that case-law does not apply in this case. Unlike other decided cases in the field of the environment, the measure in question does not seek to fulfil two different Community policies, but aims *solely* to achieve the aims defined by Article 130r of the Treaty. For this reason there is no problem of competing legal bases. The sole issue concerns the choice between application of the general rule and application of the special rule laid down by a single article of the Treaty, namely Article 130s.

35. The crux of the problem therefore lies in the definition of 'management of water resources'.

36. In the view of the Spanish Government it requires a wide interpretation. Management of water resources encompasses administrative measures and measures for the rational utilisation of water by man, with the aim of satisfying the requirements of the Community policy on the environment. Management of water resources includes, in its view, as much the transport of goods by river as the dumping of residual substances in a river.

37. The Kingdom of Spain takes the view that any action which seeks to prevent water pollution must be considered to be a measure for the management of water resources. That is because as soon as a measure is intended, directly or indirectly, principally or incidentally, to regulate aspects concerning the use of water by man the procedure laid down by Article 130s(2) applies, even if the measure in question includes measures to counteract or prevent water pollution.

38. By contrast, measures intended solely to prevent water pollution and to ensure its quality fall exclusively within the scope of Article 130s(1) and are excluded from that of Article 130s(2). That applies to Council Directive 91/676/EEC of 12 December 1991 concerning the protection of waters against pollution caused by nitrates from agricultural sources, [20] which does not concern the use of water by man, but is aimed solely at the protection of water resources against the harmful effects for such resources of certain substances applied for agricultural purposes.

19 — See, in particular, Case C-300/89 *Commission* v *Council* [1991] ECR I-2867 ('*Titanium dioxide*'), paragraph 22.

20 — OJ 1991 L 375, p. 1.

39. The Spanish Government therefore considers that 'management of water resources' should not be interpreted as meaning that a distinction is to be drawn between measures solely or principally intended to preserve water quality — and which must, accordingly, be adopted under the procedure in Article 130s(1) of the Treaty — and those which are designed to regulate the quantitative use of water — and which must accordingly be adopted under Article 130s(2) of the Treaty. It submits, in support of this argument, that the Treaty does not apply any such distinction.

40. It also asserts that if the interpretation it favours is not accepted Article 130s(2) of the Treaty, deprived of substance, would become a dead letter: management measures need only then be included amongst the numerous rules on water pollution on the ground that although they affect the use of water resources they are principally concerned with preventing water pollution, thereby enabling the special rule lawfully applicable to be all too easily sidestepped.

41. Referring to the stated objectives of the Convention as well as to the content of the measures adopted to achieve these objectives, it claims that the Convention is concerned only with the utilisation of the waters of the Danube so as to protect water quality, and for the purpose of ensuring the sustainable development of the particular natural resource which water constitutes. This is why, it concludes, Decision 97/825 should have been adopted under the procedure contained in Article 130s(2) in conjunction with Article 228(2), second sentence, and (3), first subparagraph, of the Treaty.

B — *The Council and the interveners*

42. The Council and the interveners do not accept this analysis. They maintain that the contested decision was adopted on the correct legal basis and by the appropriate procedure.

43. Their arguments are as follows.

44. *First*, Article 130s(1) of the Treaty lays down the general procedure for making decisions pertaining to the adoption of measures to achieve the objectives of Article 130r of the Treaty.

45. Conversely, Article 130s(2) lays down the procedure applicable in exceptional cases. That is indicated by the wording of the provision, which expressly states that

'*by derogation from* the decision-making procedure provided for in paragraph 1...'.[21] The Council emphasises that most language versions of the provision reproduce this wording and that, according to the Court's case-law,[22] the interpretation derived from the majority of the language versions is the one which prevails.

46. The Council points out that, according to settled case-law, any derogation from or exception to a general rule must be interpreted strictly.[23] To accept the interpretation put forward by the Spanish Government of the expression 'management of water resources' in Article 130s(2) of the Treaty would result in every Community measure concerning water being subject to the exceptional procedure set out in this provision, depriving the principle laid down in Article 130s(1) of all effectiveness.

47. The Council, supported by all of the interveners, accepts that the key difficulty raised by the present case lies in the definition of 'management of water resources' in Article 130s(2), first subparagraph, second indent, of the Treaty.

48. In the Council's view, it is to be interpreted by analogy with the various terms contained in Article 130s(2), first subparagraph, second indent, namely 'town and country planning' and 'land use'. The common factor in these three concepts lies in the notion of 'works' to improve the environment. The concept in issue must, therefore, be understood as requiring the Community to use the procedure laid down by Article 130s(2) of the Treaty only where the measure in question is exclusively, or principally, concerned with water control, that is, if its purpose is to regulate the quantitative use of water. By way of example, the Council cites the measures providing for hydraulic engineering works to regulate watercourses, or to control water levels.

49. Similarly, the French Government submits that 'management of water resources' must be understood as denoting purely physical control of water resources. By way of illustration, it gives the following examples as measures falling within Article 130s(2) of the Treaty: measures whose essential objective is to govern the use of available water supplies (set aside for irrigation); the control and regulation of rates of flow; and construction projects for the exploitation of water resources (for example, the construction of various types of dam, in particular those intended to harness hydraulic power, and navigation projects...).

21 — Emphasis added.

22 — Case C-310/95 *Road Air* [1997] ECR I-2229, paragraphs 30 to 33, and Case C-83/96 *Dega* [1997] ECR I-5001, paragraphs 6 and 13.

23 — See, in particular, Case C-399/93 *Oude Luttikhuis and Others* [1995] ECR I-4515, paragraph 23.

50. The Portuguese Government submits that the expression relates primarily to water use or the economic exploitation of water.

51. Similarly, the Finnish Government submits that it concerns the management of water use and cites measures regulating the construction of hydraulic projects, the use of hydraulic power, and water drainage for irrigation.

52. The Commission submits that in addition to the purely physical element contained in the expression 'management of water resources', the concept in issue is further concerned with measures taken in areas traditionally falling within national sovereignty, such as the rights of Member States recognised by Article 222 of the EC Treaty (now Article 295 EC).[24] In the Commission's view, Article 130s(2) of the Treaty is the correct legal base when the interests of environmental protection give rise to a conflict with the Member States' laws on property. The Commission explains that if Community measures impinge on the right of Member States within their own territory to implement infrastructure projects, the action envisaged by the Community can only be adopted on the basis of Article 130s(2) of the Treaty. The choice of such a complex formulation in place of that — more general — of the protection and management of waters indicates that the framers of the Treaty sought to cover a specific sector of legislation concerning water.

53. In the final analysis, the Council and the various interveners submit that the choice of procedure for the adoption of a measure coming within the common policy on the environment depends on the object and content of the measure concerned. Article 130s(1) is considered to be the only proper basis for a measure intended primarily to protect water quality *even if* the quantitative aspects of water management are also affected *provided that* these aspects are incidental to the primary objective of the protection of water quality. By contrast, if the measure is principally intended to govern the quantitative aspects of aquatic resources, it should be adopted on the basis of Article 130s(2).

54. In their view, analysis of both the aim and the content of the Convention's provisions shows that the primary concern of the Contracting Parties is to introduce measures and mechanisms to protect the quality of the waters of the Danube. The measures for the management of the water resources set out in the Convention are considered to be purely secondary. In other words, the Convention is only incidentally concerned with the quantitative aspects of the Danube's waters and its primary object is to combat pollution.

24 — Which provides that: 'This Treaty shall in no way prejudice the rules in Member States governing the system of property ownership.'

IV — Assessment

A — *Preliminary observations*

55. The sole plea in support of the claims of the Kingdom of Spain is breach of essential procedural requirements within the meaning of Article 173, second subparagraph, of the Treaty and more particularly on the alleged incorrect choice of legal basis by the Council for the adoption of Decision 97/825.

56. Contrary to the Spanish Government's submission,[25] the problem of competing legal bases arises even if the contested measure is not intended to achieve different Community policies. This is because any error by the Community legislature in the choice of relevant legal basis constitutes breach of an essential requirement such as to affect the validity of the measure if that error:

— concerns the choice of appropriate Treaty provision,[26] and

— is such as to deprive the Member States or the Community institutions of their right actively to participate in the development of a provision, or to oppose its adoption, thereby influencing the very content of the provision.[27]

57. As with an error in the choice of common policy concerned by the measure to be adopted, an error in the choice of the relevant decision-making procedure — defined within the framework of a policy established by the Treaty, or even by an article of the Treaty — is such as to deprive the Member States or the Community institutions of their right to exert their influence on the actual content of the measure. On the same basis, such an error constitutes not only an error of form, but also breach of an essential requirement such as to affect the validity of the act.[28]

58. In the present case, the decision-making procedure which provides for a unanimous vote of the members of the Council was established to enable Member States to exercise a right of veto when certain competences are attributed to the Community legislature in areas which traditionally fell within the exclusive domain of the

25 — See point 9 of the Spanish Government's application.

26 — See Case C-42/97 *Parliament* v *Council* [1999] ECR I-869.

27 — See Case 45/86 *Commission* v *Council* [1987] ECR 1493, and Case C-62/88 *Greece* v *Council* [1990] ECR I-1527.

28 — *Ibidem*, by analogy.

Member States,[29] or when the Member States and the Community enjoy concurrent jurisdiction within certain fields[30] and the Member States wish to retain substantial control over Community action. An error in the choice of the relevant decision-making procedure within the framework of actions coming within the same title of the Treaty, such as, in the present case, that of the environment, would deprive States of the right accorded to them by the Treaty to exercise their right of veto.

59. It follows that the dispute centres on the determination of the relevant legal basis of the contested decision.

B — *The Court's case-law*

60. According to settled case-law, the choice of legal basis for a measure must be based on objective factors which are amenable to judicial review, including, in particular, the aim and content of the measure.[31]

61. Furthermore, in order to determine whether the contested decision was adopted on the basis of the appropriate text of the Treaty, it should first be determined whether the measures in question concern principally one field of action, the effects on other fields being only incidental, or whether the two areas are equally fundamental.[32] In the first case, recourse to a single legal basis will suffice.[33] In the second, it is not sufficient[34] and the Community institution is required to adopt the measure on the basis of the two provisions on which its competence rests.[35] Such plurality is, however, excluded when the procedures provided for by the legal bases are incompatible.[36] This is necessarily the case when the two legal bases set out decision-making procedures which do not accord the same prerogatives to the institutions participating in the adoption of the measure.

62. In this case, Article 130s of the Treaty provides, for the adoption of measures coming within the policy defined in Article 130r of the Treaty, for two incompatible types of decision-making procedure. This is because a measure based on Article 130s(1) of the Treaty must be adopted by the Council on the basis of a qualified majority vote within the framework of a procedure determined by Article 189c of

29 — For example, in fiscal matters: see Article 99 of the EC Treaty (now Article 93 EC) and the explanations at paragraph 95 of this Opinion.

30 — That is, those fields in which the principle of subsidiarity applies (Article 3b of the EC Treaty (now Article 5 EC)), such as the common environmental policy.

31 — See, in particular, Case C-155/91 *Commission* v *Council* [1993] ECR I-939, paragraph 7, and Case C-42/97 *Parliament* v *Council*, paragraph 36.

32 — See in particular *Titanium dioxide*, already cited, (paragraphs 23 and 24), and Case C-155/91 *Commission* v *Council*, already cited (paragraphs 13, 14 and 20).

33 — See, in particular, Case C-70/88 *Parliament* v *Council* [1991] ECR I-4529, paragraph 17, and Case C-271/94 *Parliament* v *Council* [1996] ECR I-1689, paragraphs 32 and 33.

34 — See in particular Case 242/87 *Commission* v *Council* [1989] ECR 1425, paragraphs 33 to 37, and Case C-360/93 *Parliament* v *Council* [1996] ECR I-1195, paragraph 30.

35 — See Case 165/87 *Commission* v *Council* [1988] ECR 5545, paragraphs 6 to 13.

36 — See *Titanium dioxide*, already cited, paragraphs 17 to 21.

the Treaty. On the other hand, a measure based on Article 130s(2) of the Treaty must be adopted by the Council on the basis of a unanimous vote within the framework of a procedure of consultation of the European Parliament and of the Economic and Social Committee.

63. Consequently, it is necessary to define the scope of Article 130s.

C — *The scope of Article 130s(1) and Article 130s(2) respectively*

64. The Kingdom of Spain submits that only measures exclusively intended to prevent water pollution and which contain no provision relating to the utilisation of water by man, such as Directive 91/676, fall within Article 130s(1) of the Treaty. By contrast, measures which include provisions touching, directly or indirectly, principally or incidentally, the utilisation of water by man fall under Article 130s(2). [37]

65. The Spanish Government submits that this is because the intention of the framers of the Treaty in including 'management of water resources' in the measures to be dealt with by the procedure under Article 130s(2) of the Treaty was to emphasise that water, by its nature a natural resource absolutely essential to human life, merits special attention. It concludes that any measure concerning water, whether from a *qualitative or a quantitative point of view,* falls in principle within the special procedure requiring a unanimous vote of the Council.

66. In my opinion it is contradictory — not to say inconsistent — to submit, on the one hand, that measures relating to water, whether from a qualitative or a quantitative point of view, come within Article 130s(2), and to assert, on the other hand, that measures intended exclusively to prevent water pollution rest on Article 130s(1). These measures fall within the scope of the policy of protecting water quality. According to the Kingdom of Spain's reasoning, such measures ought to fall within the procedure laid down by Article 130s(2).

67. Furthermore, it should be noted that measures to prevent water pollution very often include provisions which bear on the manner in which man is permitted to use water. This is indeed the case for certain provisions of Directive 91/676 which, according to the Kingdom of Spain, is validly based on Article 130s(1) of the Treaty. The aim of this directive is to prevent farmers from carrying out their

37 — See in particular points 12 to 14 and 33 of the Spanish Government's reply.

activities in such a way as to cause or aggravate the pollution by nitrates of fresh and underground waters. Consequently, it requires Member States to adopt measures which have a direct or indirect bearing on the way in which their farmers use water. Article 5 of that directive thus lays down measures which prohibit farmers from discharging directly into rivers waste waters with high concentrations of nitrates or nitrogen compounds and thus require them to stockpile livestock manure. Contrary to the assertions of the Kingdom of Spain, this directive, the sole purpose of which is to prevent water pollution, nevertheless includes provisions which have a direct or indirect bearing on the use of water by man.

68. Consequently, the test proposed by the Kingdom of Spain to distinguish between measures falling within Article 130s(1) and those falling within Article 130s(2) of the Treaty is not the right one.

69. In my judgment, the Treaty articles on the common environmental policy indicate that any action of the Community intended to protect any common natural resource, including water, whether from a qualitative or a quantitative point of view, comes in principle under the general procedure laid down in Article 130s(1) of the Treaty.

70. That interpretation is borne out by the actual wording of Article 130s(1) which, it will be recalled, states clearly that:

'The Council, acting in accordance with the procedure referred to in Article 189c and after consulting the Economic and Social Committee, shall decide what action is to be taken by the Community in order to achieve the objectives referred to in Article 130r.'

71. By using the present indicative [38] and by referring generally to all of the objectives stated in Article 130r of the Treaty without qualification, the framers of the Treaty indicate expressly that the provision lays down a mandatory rule of general application. [39]

72. Article 130s(1) read together with Article 130r(1) confirms this interpretation.

73. Article 130r(1) defines the objectives of the common policy on the environment. It does not itself impose any restriction as to

38 — In all of the language versions of the Treaty, the construction of this sentence, the mode and the tense of the verb used show clearly and unequivocally that the Council is under an obligation to follow this procedure (present indicative in the German, Danish, French, Greek, Italian and Dutch versions; indicative mode in the Finnish version, and future indicative in the English, Spanish, Irish, Portuguese and Swedish versions).

39 — See Case C-6/99 *Greenpeace France and Others* [2000] ECR I-1651, paragraphs 28 to 30.

the material scope of the policy. It provides, in a general manner, that one of the objectives of the policy is to ensure that natural resources are utilised in a prudent and rational way.

74. As to 'natural resources', the traditional distinction is between renewable natural resources (such as water, air, fauna and flora) and non-renewable natural resources (such as certain raw materials, certain minerals or metals like oil, natural gas, uranium, gold...).

75. The objective of the 'prudent and rational utilisation of natural resources' conveys the idea that protective measures affecting individual elements of the environment as constituted by the natural resources must be implemented in compliance with strict rules. [40]

40 — See, in particular, the Declaration of the Council of the European Communities and of the representatives of the governments of the Member States present in Council, of 22 November 1973, concerning an action programme for the European Communities concerning the environment (OJ 1973 C 112, p. 1, in particular p. 40), and the Resolutions of the Council of the European Communities and of the representatives of the governments of the Member States present in Council concerning the pursuit and attainment of a European Communities' policy and action programme for the environment, of 17 May 1977 (OJ 1977 C 139, p. 1, in particular p. 12, otherwise known as 'the first action programme'); of 7 February 1983 (1982-1986) (OJ 1983 C 46, p. 1, in particular p. 29, otherwise known as 'the second action programme'), and of 19 October 1987 (1987-1992) (OJ 1987 C 328, p. 1, in particular p. 29, otherwise known as 'the third action programme').

76. The phrase '*prudent use*' means that the common policy on the environment must aim to avert the risks of pollution to which the natural resources may be subjected. The emphasis is placed on the need to lay down *measures to preserve the quality* of natural resources.

77. The phrase '*rational use*' shows that the common environmental policy aims to avoid all waste, and to use only the quantity of natural resources necessary to meet the present needs of man, in such a way that the needs of future generations are not compromised. The objective of 'sustainable development' [41] inherent in the common policy on the environment is understood in the light of the rule that natural resources must be used in a rational manner. The emphasis here is on the necessity of implementing *measures to preserve the quantity* of natural resources.

78. The measures to be adopted to achieve the objective of the 'prudent and rational use of natural resources' depend on the type of natural resource in question.

41 — For further consideration of the meaning of this concept, see paragraphs 54 to 57 of my Opinion of 7 March 2000 in *First Corporate Shipping* (Case C-371/98, ECR I-9235, I-9237).

79. If their purpose is the protection of renewable natural resources, the proposed measures must aim to encourage moderate use, thereby allowing their regular renewal. Taking water as an example, it could be required that withdrawals from groundwater not be carried out in such a way as to cause springs to dry up.

80. As for non-renewable natural resources, the measures imposed must prevent their rapid exhaustion. It may be a question, for example, of banning the exploitation, extraction or use of natural resources at risk of running out, or of making the extraction or use of non-renewable natural resources subject to operating licenses granted according to a strictly defined rate and intensity.

81. It therefore follows from Article 130r(1) in conjunction with Article 130s(1) of the Treaty that *any action* of the Community intended, *qualitatively or quantitatively, to preserve natural resources*, including water, comes *in principle* under the procedure laid down by Article 189c of the Treaty.

82. Consequently the particular natural resource which water represents is not, in principle, excluded from the scope of Article 130s(1) of the Treaty.

83. As for the scope of Article 130s(2), first subparagraph, second indent, of the Treaty, the article expressly states that the unanimous vote of the Council is required only if the measures adopted concern certain matters such as, in particular, the '*management of water resources*'. In order to identify the measures falling within the scope of this article, it is therefore necessary to define the concept of 'management of water resources'.

D — '*Management of water resources*'

84. According to the Kingdom of Spain, the concept of 'management of water resources' merges into the more general concept of 'management' or 'use of the particular natural resource constituted by water'. This definition results in all measures which bear directly or indirectly, principally or incidentally on the qualitative or quantitative aspects of water falling in principle within Article 130s(2) of the Treaty.

85. That definition cannot be accepted since, in particular, it appears from Article 130s(1) in conjunction with Article 130r(1) of the Treaty that water as a particular natural resource is not, in principle, excluded from the scope of Arti-

cle 130s(1). 'Management of water resources' has, in my judgment, a precise meaning which is distinct from that of 'management of the particular natural resource constituted by water' but nevertheless constitutes a particular element of the latter concept. The concept in issue is therefore included in the notion of 'policy of defence of the natural resource constituted by water'.

86. I find that recourse to semantic interpretation in order to define the concept in issue is unsatisfactory given the variety of expressions used, and of their meanings, in the various language versions of the Treaty. [42]

87. In my judgment the provisions of Article 130s(2) can only be interpreted together with Article 130r of the Treaty which, as we know, provides that, in order to ensure an effective protection of the environment, the Community legislature must adopt concrete measures based on the principles contained in paragraph 2, and respecting the criteria listed in paragraph 3. Furthermore, it seems to me that the reasoning which led the framers of the Treaty on European Union to establish the specific procedure laid down in Article 130s(2) of the Treaty can throw light on the meaning of this concept.

42 — See, in particular, the various semantic analyses put forward by the applicant and the various Member States which have intervened in this case.

88. Article 130s(2) of the Treaty exhaustively lists *three types of measure* which require the specific procedure which it sets out.

89. The common factor between these three categories of measure is that whilst their primary aim is the protection of the environment, the Community institutions are obliged, in order to implement their measures, to intervene or interfere, incidentally or subsidiarily, in the areas which traditionally come within the sovereign power of the Member States, such as energy, regional planning or taxation, and over which the Member States still wish to maintain wide powers.

90. This is why the framers of the Treaty decided that when the implementation of measures adopted by the Community institutions requires intervention by the Community in these areas the unanimous vote of the members of the Council should be the rule, so that each Member State may exercise a right of veto.

91. Article 130s(2), first subparagraph, first indent, of the Treaty states *first* that 'provisions primarily of a fiscal nature' must be adopted by the Council, acting unanimously on the Commission's proposal, after consulting the Parliament and the Economic and Social Committee.

92. Article 130s(2), first subparagraph, first indent, of the Treaty, read together with Article 130r of the Treaty, must be interpreted as meaning that only measures of a primarily fiscal nature which are intended to protect the environment must be adopted in accordance with the procedure established by Article 130s(2), first subparagraph.

93. Amongst the 'provisions primarily of a fiscal nature', within the meaning of Article 130s(2), first subparagraph, first indent, may be mentioned tax relief in favour of businesses using 'clean sources of power'.

94. Similarly, one may include 'eco-taxes' — specific and harmonised taxes applicable to the users of polluting materials[43] — introduced on the principle of 'polluter pays'.

95. The specific procedure laid down by Article 130s(2), first subparagraph, first indent, of the Treaty may be compared with that laid down by Article 99 of the Treaty, which requires the Council to act unanimously in the field of harmonisation of taxes on turnover, excise duties and other indirect taxes. This right of veto accorded to the Member States is the result of a political choice on the part of the framers of the Treaty. In the current state of development of the Community integration process, the Member States wish to conserve a wide power where Community measures concern measures of an essentially fiscal nature for the protection of the environment, owing to the consequences which such measures can have for their national economies. They have, therefore, associated the adoption of this type of measure with the unanimous agreement of the members of the Council.

96. *The second category* of measures falling within Article 130s(2), first subparagraph, third indent, of the Treaty concerns 'measures significantly affecting a Member State's choice between different energy sources and the general structure of its energy supply'.

97. Article 130s(2), first subparagraph, third indent, of the Treaty, read together with Article 130r of the Treaty, must be interpreted as meaning that only measures to protect the environment which substantially affect the choice made by a Member State between different sources of energy and the general structure of energy supply must be adopted in accordance with the procedure established by Article 130s(2), first subparagraph.

43 — See, in particular, the proposal for a Council directive (92/C 196/01) establishing a tax on carbon dioxide emissions and on energy (OJ 1992 C 196, p. 1).

98. It is necessary to compare these provisions with Declaration No 9 annexed to the Single European Act, which stated that 'The Conference confirms that the Community's activities in the sphere of the environment may not interfere with national policies regarding the exploitation of energy resources.' This declaration was annexed to the Single European Act because the Member States were concerned that Article 130r in conjunction with Article 130s of the Treaty might enable the Community legislature to encroach upon, or limit, their right to exploit certain natural resources fundamental to the definition and implementation of their energy policy,[44] at a time when energy was not even an area assigned to the Community by virtue of Article 3 of the EC Treaty (now, after amendment, Article 3 EC).[45]

99. This declaration was not confirmed by the Treaty on European Union. On the contrary, the framers of the Treaty on European Union amended Article 130s and supplemented the provision by inserting paragraph 2, which expressly provides that the Community may, in the interests of environmental protection, adopt measures which may interfere in the field of energy policy defined by the Member States. Similarly, it should be emphasised that since the entry in force of the Treaty on European Union the Community has certain powers in the field of energy: Article 3(t) of the EC Treaty (now Article 3(u) EC) provides that Community action includes 'measures in the sphere of energy'. Further, the Fifth Action Programme on the environment[46] states that 'energy policy will constitute ... a key factor in the realisation of sustainable development'[47] and the Council Resolution of 8 July 1996 on the White Paper entitled 'An energy policy for the European Union'[48] states that in order to ensure lasting economic growth the Community must implement an energy policy by establishing a long-term strategy of efficient and reliable energy supplies for a safe environment.

100. Amongst the measures 'substantially affecting the choice of a Member State between different sources of energy and the general structure of its supply', one may cite the measures which oblige Member States to construct hydroelectric dams to conserve non-renewable natural resources used to produce energy, such as oil, but

44 — Energy produced from certain natural resources, such as oil, natural gas, and uranium could have been the object of Community measures taken for the purpose of 'the prudent or rational use of these natural resources'; (see paragraphs 75 to 80 of this Opinion).

45 — It follows from this declaration that metals, as natural resources capable of extraction from the ground, were not covered by the Community's environment policy. They only became so when it became necessary to prevent environmental risks caused by their extraction (see, in particular, the various decisions of the Council concerning the combat of pollution caused by the discharge of hydrocarbons into the sea and, in particular, Council Decision 81/971/EEC of 3 December 1981 establishing a Community system of information for the control and reduction of pollution caused by the discharge of hydrocarbons into the sea (OJ 1981 L 355, p. 52), repealed and replaced by Council Decision 85/85/EEC of 6 March 1986 (OJ 1986 L 77, p. 33)).

46 — Community Programme on policy and action for the environment and the sustainable development and respect for the environment (OJ 1993 C 138, p. 5), otherwise known as 'the Fifth Action Programme'. This programme covers the period 1992-2000 and is entitled 'Towards sustainable development'. It follows the Resolution of the Council and of the representatives of the governments of the Member States meeting in Council of 1 February 1993 (OJ 1993 C 138, p. 1).

47 — Fifth Action Programme, p. 31.

48 — OJ 1996 C 224, p. 1.

exploited in such a way that the natural resources in question would be exhausted within a short space of time if measures to protect them were not put in place. One may also note, conversely, measures which would prohibit the construction of hydroelectric dams in order to safeguard water supplies for certain areas of the Community.

101. Recourse to the procedure laid down by Article 130s(2) of the Treaty for the adoption of these measures is also the result of a political choice. At the present stage of development of the Community's integration process, the Member States wish to preserve wide powers in the field of energy policy because of the effects which such measures may have on their national economies. To the extent that the implementation of such measures may affect sensitive areas of the Member States' economies, may interfere in areas traditionally reserved to the Member States and, in particular as regards energy policy, may have consequences in an area subject to the near-sovereign powers of the Member States, they have associated the adoption of this type of measure with the unanimous agreement of the members of the Council.

102. *The third and final category* of measure falling within Article 130s(2), first subparagraph, second indent, of the Treaty concerns 'town and country planning, land use... the management of water resources'.

103. It follows from Article 130r, read together with Article 130s(2), first subparagraph, second indent, that only measures which are intended to protect the environment and which concern 'town and country planning, land use and the management of water resources' must be adopted in accordance with the procedure established by Article 130s(2), first subparagraph.

104. In order better to understand the scope of these provisions, it is necessary to start by defining 'environment'. Neither 'environment' nor 'policy (or action) on the environment' has been defined by the framers of the Single European Act in Articles 130r and 130s; neither the Treaty on European Union nor the Treaty of Amsterdam has addressed this omission. The failure to define these concepts was, without doubt, intentional. Drawing up an exhaustive list of the content of these concepts risks restricting them, when, in fact, they evolve alongside developments in science and technology. In the Fifth Action Programme, the Member States are encouraged to take account of developments in perfecting non-polluting techniques, particularly in genetic engineering, and to explore emerging industries when they define environmental policy. At the same

time, the Community is encouraged, in particular, to make significant contributions in the field of bioethics, and in the development and support of priority research programmes. [49]

105. However, the Commission has been putting forward definitions since 1971. It took the view that the environment included 'all those elements which form, in the complexity of their relations, the frameworks, the milieus and the conditions of life of man and society'. [50] The Commission explained that environmental policy embraced three distinct areas: man's physical, social and cultural environment. Pursuing its analysis of these concepts, [51] it emphasised that protection of the physical environment meant reducing pollution and harmful effects, town and country planning, establishing transport and communication networks. The improvement of systems of care, incomes, job security, working conditions, housing, and training served to preserve man's social environment. Finally, protection of the cultural environment was defined by action to preserve urban and rural sites and improve education and information, cultural structures and leisure.

106. In my view, therefore, measures which must be adopted on the basis of Article 130r in conjunction with Article 130s(2), first subparagraph, second indent, of the Treaty are those whose aim is the preservation or improvement of the quality of the physical, social or cultural human environment. They concern in particular town and country planning, and the establishment of transport and communication networks adapted to changing lifestyles.

107. Achieving this aim necessarily requires, of course, major works, creating infrastructures adapted to meet environmental concerns. Projects which spring readily to mind are the construction of motorways, railways, and hydraulic engineering projects, both so as to ensure the supply of drinking water to regions which are persistently or temporarily deprived thereof, [52] and so as to enable the transport of goods or people [53] without the harmful effects of road transport caused to the inhabitants, fauna and flora of the regions affected by such measures.

108. 'Management of water resources', interpreted in the light of the two other concepts to which Article 130s(2), first

49 — Already cited (see footnote 46).

50 — First Communication on the Community Policy on the environment of 22 July 1971 (doc. SEC (71) 2616 final).

51 — Communication de la Commission au Conseil sur un programme des Communautés européennes en matière d'environnement (JO 1972 C 52, p. 1).

52 — For example, because of meteorological phenomena (drought in certain parts of Europe depriving the inhabitants of water at certain times of the year), or geographical factors (certain islands without sources of drinking water)...

53 — For example, structural projects, such as canals enabling the transport of goods and people.

subparagraph, second indent, of the Treaty refers, thus evokes the idea of projects in the aquatic environment of the Member States [54] motivated by the need for Community-wide town and country planning with a view to improving man's quality of life. [55] The effects of such measures on the rights accorded to the Member States by Article 222 of the Treaty are clear, as are the economic implications which such measures have for the Member States. To the extent that the implementation of such measures often impinges upon the right of property as it is recognised by the Member States, and on their near-sovereign powers in the field of town and country planning, in the current state of development of the process of Community integration, the framers of the Treaty wished to associate the adoption of such measures with the unanimous agreement of the members of the Council.

109. Measures falling within the concept of 'management of water resources' and which must therefore be adopted in accordance with the procedure laid down by Article 130s(2) of the Treaty are therefore in my view those which involve projects to be carried out in the 'aquatic' environment of the Member States which may alter the quantity of water available or remaining available for each of the Member States concerned, and which are motivated by the need for Community-wide town and country planning to improve man's quality of life. This is the case for measures involving projects intended not only to supply drinking water to a region in which there are permanent or temporary shortages, [56] or to ration the amount of water used in a given region in order to prevent the exhaustion of this vital natural resource, but also to enable the transport of goods or persons without the harmful effects of road transport caused to the inhabitants, fauna and flora of the regions affected by such measures. By contrast, measures which require or prohibit the construction of hydroelectric dams with the aim of preserving natural resources do not come within this provision. [57]

110. Having analysed the purpose and content of the contested decision, it remains to see whether the measure in question involves exclusively, or essentially or principally, projects in the aquatic environment of the Member States motivated by the need for Community-wide town and country planning with a view to improving man's quality of life. If this is not the case, then the contested decision is subject not to the special procedure in Article 130s(2) but to the general procedure provided for by Article 130s(1).

54 — That is, the 'territorial waters', those parts of the sea falling within the national ompetence of the Member States, but also the rivers, estuaries, springs, ponds, lakes...

55 — Such as the creation of a coherent infrastructure.

56 — It could also concern irrigation and drainage programmes.

57 — See paragraph 100 of this Opinion.

E — *The basis of the contested decision*

111. The purpose of the Convention, as stated in its preamble, is twofold. The Contracting Parties declare a desire not only to protect the quality of the waters of the Danube, but also to ensure 'sustainable water management, rational use and conservation of water resources'. [58]

112. The purpose of the Convention as thus stated in the preamble does not enable us to determine whether its principal, sole or essential objective lies in protecting the quality of the waters of the Danube, or in the desire to influence the way in which the Contracting Parties may dispose of or use the waters of the Danube from the purely physical point of view — in particular, whether these measures are intended to restrict the way in which the Contracting Parties can manage the economic resources constituted by the waters of the Danube.

113. On the other hand, it appears from the wording of Article 2(1) to (3), which define the objectives of the Contracting Parties, that the Convention *is principally concerned to protect the water quality* of the Danube and only indirectly seeks 'as far as possible' the rational use of the surface waters and groundwater in the catchment area. The terms used [59] demonstrate that the concern of the legislator was to assign to the Contracting Parties stricter obligations as to the preservation of the water quality conditions of the river Danube.

114. The provisions read as follows:

'1. The Contracting Parties shall strive at achieving the goals of a sustainable and equitable water management, including the conservation, improvement and the rational use of surface waters and groundwater in the catchment area [60] *as far as possible*. Moreover the Contracting Parties *shall make all efforts to control the hazards originating from accidents involving substances hazardous to water*, [61] floods and ice-hazards of the Danube River. Moreover they shall endeavour *to contribute to reducing the pollution loads* of the Black Sea from sources in the catchment area.

58 — Fourth paragraph in the preamble. See also the first, fifth and sixth paragraphs in the preamble.

59 — It is stated that the Contracting Parties must 'make all efforts', 'take all appropriate legal [and] administrative... measures', and adopt '[urgent] water pollution abatement measures'.

60 — By 'catchment area' of the Danube is meant 'the hydrological river basin as far as it is shared by the Contracting Parties' (Article 1(b) of the Convention).

61 — This expression denotes specifically 'substances the hazard potential of which to water resources is extraordinarily high so that their handling requires special preventive and protective measures' (Article 1(e) of the Convention).

2. The Contracting Parties pursuant to the provisions of this Convention shall cooperate on fundamental water management issues and take all appropriate legal, administrative and technical measures, *to at least maintain and improve the current environmental and water quality conditions of the Danube River* and of the waters in its catchment area and to prevent and reduce as far as possible adverse impacts and changes occurring or likely to be caused.

3. To this end the Contracting Parties, taking into account the urgency of *water pollution abatement measures* and of rational, sustainable water use, shall set priorities as appropriate and shall strengthen, harmonise and coordinate measures taken and planned to be taken at the domestic and international level throughout the Danube basin aiming at sustainable development and environmental protection of the Danube River. This objective in particular is directed to ensure the sustainable use of water resources for municipal, industrial and agricultural purposes as well as *the conservation and restoration of ecosystems and to cover also other requirements occurring as to public health.*' [62]

115. The provisions of the Convention laying down the measures which the Contracting Parties are required to take in order to achieve the objective of the Convention confirm this analysis. The Convention does not impose concrete or mandatory requirement on the Contracting Parties to dispose of or use the waters of the Danube, from a purely physical or practical point of view, in accordance with mandatory requirements defined earlier in the Convention.

116. Thus, Article 3 of the Convention, which defines its scope, provides in general terms, in paragraph 2, that: 'Subject to this Convention *in particular* shall be... planned activities and ongoing measures [63] *as far as they cause* or are likely to cause *transboundary impacts*'. [64]

'Transboundary impact' means 'any significant adverse effect on the riverine environment resulting from a change in the conditions of waters caused by human activity and stretching out beyond an area under the jurisdiction of a Contracting Party. Such changes may affect life and property, safety of facilities and the aquatic ecosystems concerned'. [65]

62 — Emphasis added.

63 — Such as the discharge of waste waters, heat discharge, planned activities and measures in the field of water construction works, the operation of existing hydrotechnical constructions, in particular reservoirs and water power plants, planned activities and measures for the purposes of water use, such as water power utilisation, water transfer and withdrawal, the handling of substances hazardous to water... (see Article 3(2)(a), (b), (c), (d) and (e)).

64 — Emphasis added.

65 — Article 1(c) of the Convention.

Similarly, Article 3(3) states that 'this Convention is applicable to issues of fishery and inland navigation *as far as problems of water protection against pollution caused by these activities are concerned*'. [66]

117. The clarification afforded by these provisions [67] limits the scope of the Convention to polluting activities emanating from the territory of the Contracting Parties. The clarification concerning the effect on the environment of human activity demonstrates conclusively that the aim of the framers of the Convention is to combat pollution of the river Danube, not to restrict the power of the Contracting Parties in the field of land planning within their territories.

118. The other provisions of the Convention confirm this analysis. Article 4, concerned with the forms of cooperation established by the Convention, is limited to providing for the exchange of information regarding water management.

119. Similarly, Article 6, which sets out specific measures for protecting water resources, provides that 'the Contracting Parties shall take appropriate measures aiming at... a sustainable and equitable use of water resources, as well as at the conservation of ecological resources', but it does not impose any practical measures to that end.

120. This is because point (a) of this provision merely requires the Contracting Parties to 'enumerate groundwater resources subject to long-term protection, as well as protection zones valuable for existing or future drinking water supply purposes.'

121. By contrast, points (b), (c), (d) and (e) state that the Contracting Parties must adopt appropriate measures with a view to preventing the pollution of the waters of the Danube, in particular measures to restrict the use of nitrates, plant protection agents, pesticides and other hazardous substances; [68] to minimise the risks of accidental pollution by preventive and control measures; to evaluate the importance of different biotope elements for the riverine ecology, and propose measures for improving the aquatic and littoral ecological conditions.

66 — Emphasis added.

67 — In particular, expressions such as 'as far as...'.

68 — Under Article 1(d) of the Convention, the expression 'hazardous substances' means 'substances which have toxic, [carcinogenic], mutagenic, teratogenic or bioaccumulative effects, in particular those being persistent and having significant adverse impact on living organisms'.

122. Similarly, Part II of the Convention, concerning multilateral cooperation measures which the Contracting Parties must adopt in order to comply with their obligations, lays down practical measures aimed at preventing, controlling and reducing pollution of the waters of the river Danube.

123. Thus, Article 5 is entirely concerned with measures to prevent, control and reduce transborder impact. Paragraph 2 provides specifically that 'the Contracting Parties shall separately or jointly take... the following measures':

— point (a) requires the Contracting Parties to 'record conditions of natural water resources within the river Danube catchment area applying agreed quantity and quality parameters...';

— point (b) of the same provision requires the Contracting Parties to 'adopt legal provisions providing for requirements, including time-limits to be met by waste water discharges';

— point (d) of the same provision obliges the Contracting Parties to 'adopt legal provisions for reducing inputs of nutrients or hazardous substances from non-point sources, especially for the application of nutrients as well as of plant protection agents and pesticides in agriculture';

— point (f) of the same provision requires the Contracting Parties to take 'appropriate measures to avoid the transboundary impacts of wastes and hazardous substances in particular originating from transport.'

124. Similarly, Article 7 lays down practical obligations in terms of standards to be met in order to reduce emissions and improve water quality.

125. Thus, Article 7(1) states that 'the Contracting Parties, taking into account the proposals from the International Commission, shall set emission limits applicable to individual industrial sectors or industries in terms of pollution loads and concentrations, and based, in the best possible way, on low- and non-waste technologies at source...'.

126. Paragraph 3 provides that 'for the purpose of paragraphs 1..., Annex II to this Convention contains a list of industrial

sectors and industries as well as an additional list of hazardous substances and groups of substances, the discharge of which from point and non-point sources shall be prevented or considerably reduced. The updating of Annex II lies with the International Commission.'

127. It follows from these considerations that both the purpose and the content of the Convention are concerned, essentially, with protecting the water quality of the river Danube, and that its measures do not involve construction projects in the aquatic environment of the Member States, such as may change the quantity of water available, or remaining available, for each of the Member States concerned, and motivated by the desire for Community-wide town and country planning with a view to improving man's quality of life. Consequently, the contested decision is subject not to the special procedure provided for by Article 130s(2), but to the general procedure provided for by Article 130s(1) of the Treaty. The complaint put forward by the Kingdom of Spain must therefore be dismissed as unfounded.

Conclusion

128. For these reasons, I suggest that the Court:

— dismiss the application; and

— order the Kingdom of Spain to pay the costs.