# JUDGMENT OF THE COURT (Sixth Chamber)

8 November 2001 *

In Case C-127/99,

**Commission of the European Communities,** represented by P. Stancanelli, acting as Agent, with an address for service in Luxembourg,

applicant,

v

**Italian Republic,** represented by U. Leanza, acting as Agent, and P.G. Ferri, avvocato dello Stato, with an address for service in Luxembourg,

defendant,

APPLICATION for a declaration that:

— by failing to establish one or more action programmes having the features, and meeting the conditions, laid down in Article 5 of Council Directive

* Language of the case: Italian.

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),

— by failing to carry out fully and correctly the monitoring operations prescribed by Article 6 of that directive; and

— by failing to draw up and submit a full report of the kind required by Article 10 of that directive,

the Italian Republic has failed to fulfil its obligations under Community law,

THE COURT (Sixth Chamber),

composed of: N. Colneric, President of the Second Chamber, acting for the President of the Sixth Chamber, C. Gulmann, J.-P. Puissochet, V. Skouris and J.N. Cunha Rodrigues (Rapporteur), Judges,

Advocate General: L.A. Geelhoed,
Registrar: L. Hewlett, Administrator,

having regard to the Report for the Hearing,

after hearing oral argument from the parties at the hearing on 8 February 2001, during which the Commission was represented by P. Stancanelli and the Italian Republic by M. Fiorilli, avvocato dello Stato,

after hearing the Opinion of the Advocate General at the sitting on 31 May 2001,

gives the following

## Judgment

1 By application lodged at the Court Registry on 14 April 1999, the Commission of the European Communities brought an action under Article 169 of the EC Treaty (now Article 226 EC) for a declaration that:

— by failing to establish one or more action programmes having the features, and meeting the conditions, laid down in Article 5 of Council Directive 91/676/EEC of 12 December 1991 concerning the protection of waters against pollution caused by nitrates from agricultural sources (OJ 1991 L 375, p. 1),

— by failing to carry out fully and correctly the monitoring operations prescribed by Article 6 of that directive; and

— by failing to draw up and submit a full report of the kind required by Article 10 of that directive,

the Italian Republic has failed to fulfil its obligations under Community law.

## Legislation

2 According to Article 1 thereof, the aim of the directive is to reduce water pollution caused or induced by nitrates from agricultural sources and to prevent further such pollution.

3 To that end, the directive provides that Member States are to take various measures adhering to a schedule whose time-limits start to run on the date on which the directive was notified to the Member States, namely 19 December 1991.

4 Thus, Article 3(2) of the directive provides that, within a two-year period following the notification thereof, Member States are to designate zones vulnerable to pollution and are to notify the Commission of that initial designation within six months.

5 Article 4 of the Directive provides as follows:

'1. With the aim of providing for all waters a general level of protection against pollution, Member States shall, within a two-year period following the notification of this Directive:

(a) establish a code or codes of good agricultural practice, to be implemented by farmers on a voluntary basis, which should contain provisions covering at least the items mentioned in Annex IIA;

(b) set up where necessary a programme, including the provision of training and information for farmers, promoting the application of the code(s) of good agricultural practice.

2. Member States shall submit to the Commission details of their codes of good agricultural practice and the Commission shall include information on these codes in the report referred to in Article 11. In the light of the information received, the Commission may, if it considers it necessary, make appropriate proposals to the Council.'

6 Article 5 of the directive provides that:

'1. Within a two-year period following the initial designation referred to in Article 3(2) or within one year of each additional designation referred to in Article 3(4), Member States shall, for the purpose of realising the objectives specified in Article 1, establish action programmes in respect of designated vulnerable zones.

2. An action programme may relate to all vulnerable zones in the territory of a Member State or, where the Member State considers it appropriate, different programmes may be established for different vulnerable zones or parts of zones.

3. Action programmes shall take into account:

(a) available scientific and technical data, mainly with reference to respective nitrogen contributions originating from agricultural and other sources;

(b) environmental conditions in the relevant regions of the Member State concerned.

4. Action programmes shall be implemented within four years of their establishment and shall consist of the following mandatory measures:

(a) the measures in Annex III;

(b) those measures which Member States have prescribed in the code(s) of good agricultural practice established in accordance with Article 4, except those which have been superseded by the measures in Annex III.

5. Member States shall moreover take, in the framework of the action programmes, such additional measures or reinforced actions as they consider necessary if, at the outset or in the light of experience gained in implementing the action programmes, it becomes apparent that the measures referred to in paragraph 4 will not be sufficient for achieving the objectives specified in Article 1. In selecting these measures or actions, Member States shall take into account their effectiveness and their cost relative to other possible preventive measures.

6. Member States shall draw up and implement suitable monitoring programmes to assess the effectiveness of action programmes established pursuant to this Article.

Member States which apply Article 5 throughout their national territory shall monitor the nitrate content of waters (surface waters and groundwater) at selected measuring points which make it possible to establish the extent of nitrate pollution in the waters from agricultural sources.

7. Member States shall review and if necessary revise their action programmes, including any additional measures taken pursuant to paragraph 5, at least every four years. They shall inform the Commission of any changes to the action programmes.'

7 Annex III to the directive, which is entitled 'Measures to be included in action programmes as referred to in Article 5(4)(a)' and which is mentioned in Article 5, is worded as follows:

'1. The measures shall include rules relating to:

1. periods when the land application of certain types of fertiliser is prohibited;

2. the capacity of storage vessels for livestock manure; this capacity must exceed that required for storage throughout the longest period during which land application in the vulnerable zone is prohibited, except where it can be demonstrated to the competent authority that any quantity of manure in excess of the actual storage capacity will be disposed of in a manner which will not cause harm to the environment;

3. limitation of the land application of fertilisers, consistent with good agricultural practice and taking into account the characteristics of the vulnerable zone concerned, in particular:

(a) soil conditions, soil type and slope;

(b) climatic conditions, rainfall and irrigation;

(c) land use and agricultural practices, including crop rotation systems;

and to be based on a balance between:

(i) the foreseeable nitrogen requirements of the crops, and

(ii) the nitrogen supply to the crops from the soil and from fertilisation corresponding to:

— the amount of nitrogen present in the soil at the moment when the crop starts to use it to a significant degree (outstanding amounts at the end of winter),

— the supply of nitrogen through the net mineralisation of the reserves of organic nitrogen in the soil,

— additions of nitrogen compounds from livestock manure,

— additions of nitrogen compounds from chemical and other fertilisers.

2. These measures will ensure that, for each farm or livestock unit, the amount of livestock manure applied to the land each year, including by the animals themselves, shall not exceed a specified amount per hectare.

The specified amount per hectare [shall] be the amount of manure containing 170 kg N. However:

(a) for the first four year action programme Member States may allow an amount of manure containing up to 210 kg N;

(b) during and after the first four-year action programme, Member States may fix different amounts from those referred to above. These amounts must be fixed so as not to prejudice the achievement of the objectives specified in Article 1 and must be justified on the basis of objective criteria, for example:

— long growing seasons,

— crops with high nitrogen uptake,

— high net precipitation in the vulnerable zone,

— soils with exceptionally high denitrification capacity.

If a Member State allows a different amount under subparagraph (b), it shall inform the Commission which will examine the justification in accordance with the procedure laid down in Article 9.

3. Member States may calculate the amounts referred to in paragraph 2 on the basis of animal numbers.

4. Member States shall inform the Commission of the manner in which they are applying the provisions of paragraph 2. In the light of the information received, the Commission may, if it considers necessary, make appropriate proposals to the Council in accordance with Article 11.'

8 Article 6 of the directive provides:

'1. For the purpose of designating and revising the designation of vulnerable zones, Member States shall:

(a) within two years of notification of the Directive, monitor the nitrate concentration in freshwaters over a period of one year:

(i) at surface water sampling stations, laid down in Article 5(4) of Directive 75/440/EEC and/or at other sampling stations which are representative of surface waters of Member States, at least monthly and more frequently during flood periods;

(ii) at sampling stations which are representative of the groundwater aquifers of Member States, at regular intervals and taking into account the provisions of Directive 80/778/EEC;

(b) repeat the monitoring programme outlined in (a) at least every four years, except for those sampling stations where the nitrate concentration in all previous samples has been below 25 mg/l and no new factor likely to increase the nitrate content has appeared, in which case the monitoring programme need be repeated only every eight years;

(c) review the eutrophic state of their fresh surface waters, estuarial and coastal waters every four years.

2. The reference methods of measurement set out in Annex IV shall be used.'

9 The reference methods mentioned in Article 6 of the directive are defined in the following way by Annex IV thereto ('Reference methods of measurement'):

'Chemical fertiliser

Nitrogen compounds shall be measured using the method described in Commission Directive 77/535/EEC of 22 June 1977 on the approximation of the laws of the Member States relating to methods of sampling and analysis for fertilisers, as amended by Directive 89/519/EEC.

Freshwaters, coastal waters and marine waters

Nitrate concentration shall be measured in accordance with Article 4a(3) of Council Decision 77/795/EEC of 12 December 1977 establishing a common procedure for the exchange of information on the quality of surface fresh water in the Community, as amended by Decision 86/574/EEC.'

10 Article 10 of the directive provides:

'1. Member States shall, in respect of the four-year period following the notification of this Directive and in respect of each subsequent four-year period, submit a report to the Commission containing the information outlined in Annex V.

2. A report pursuant to this Article shall be submitted to the Commission within six months of the end of the period to which it relates.'

11 Annex V to the directive ('Information to be contained in reports [referred] to in Article 10') lists the information as follows:

'1. A statement of the preventive action taken pursuant to Article 4.

2. A map showing the following:

(a) waters identified in accordance with Article 3(1) and Annex I indicating for each water which of the criteria in Annex I was used for the purpose of identification;

(b) the location of the [designated] vulnerable zones, distinguishing between existing zones and zones designated since the previous report.

3. A summary of the monitoring results obtained pursuant to Article 6, including a statement of the considerations which led to the designation of each vulnerable zone and to any revision of or addition to designations of vulnerable zones.

4. A summary of the action programmes drawn up pursuant to Article 5 and, in particular:

   (a) the measures required by Article 5(4)(a) and (b);

   (b) the information required by Annex III(4);

   (c) any additional measures or reinforced actions taken pursuant to Article 5(5);

   (d) a summary of the results of the monitoring programmes implemented pursuant to Article 5(6);

   (e) the assumptions made by the Member States about the likely timescale within which the waters identified in accordance with Article 3(1) are expected to respond to the measure in the action programme, along with an indication of the level of uncertainty incorporated in these assumptions.'

12 Under Article 12(1) of the directive, Member States were to bring into force the laws, regulations and administrative provisions necessary to comply with the directive within two years of its notification and to inform the Commission thereof forthwith.

## The pre-litigation procedure

13 On 25 April 1997, the Commission sent the Italian Republic a letter of formal notice stating that it had not received the report required by Article 10 of the directive concerning the first four-year period following notification of the directive, namely the period from 20 December 1991 to 20 December 1995. That letter also pointed out that there was no information at all about either the establishment of the action programmes referred to in Article 5 of the directive or the implementation of the monitoring operations provided for in Article 6 thereof.

14 The Italian authorities replied by letter of 16 July 1997 and sent documents relating to the measures taken by various Italian regions for the protection of surface water and groundwater against pollution from agricultural and livestock activities.

15 The Commission took the view that that information did not amount to a report under Article 10 of the directive and that it did not enable it to ascertain satisfactorily whether Articles 5 and 6 of the directive were being complied with so far as the action programmes and the monitoring of nitrate concentration in freshwater were concerned. By letter of 19 February 1998, the Commission therefore sent the Italian Republic a reasoned opinion in which it pointed out that the latter had failed to fulfil its obligations by not enacting within the prescribed period the provisions necessary to incorporate the directive into national law and,

in particular, by not having satisfied the requirements laid down by Articles 5, 6 and 10 of the directive. It granted the Member State concerned a two-month period to act in accordance with the opinion.

16 By letter of 18 September 1998, the Italian authorities sent the Commission a progress report on the implementation of the directive (hereinafter 'the report' or 'the report of 18 September 1998'). That report stated that a code of good agricultural practice was being drawn up and that various Italian regions had taken measures to protect water from pollution by nitrates.

17 Having found that the report did not meet the requirements of Article 10 of the directive and that the information available to it did not enable it to ascertain whether the obligations arising under Articles 5 and 6 of the directive had been fully complied with by the Italian Republic, the Commission brought the present action.

18 In this action, the Commission no longer relies on the complaint, referred to in the reasoned opinion, that the Italian Republic has failed to enact the provisions necessary to incorporate the directive into national law but confines itself to the specific obligations imposed by Articles 5, 6 and 10 of the directive.

19 Furthermore, on 20 May 1997, the Commission had brought a preliminary action against the Italian Republic for failing to incorporate the directive into Italian law and failing to designate vulnerable zones in accordance with Article 3(2) thereof. That action culminated in the judgment of 25 February 1999 in Case C-195/97 *Commission* v *Italy* [1999] ECR I-1169, in which the Court ruled that, by failing to adopt and to 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 failed to fulfil its obligations under Article 12(1) of the directive.

20 On 11 May 1999, the Italian Republic enacted Legislative Decree No 152 (supplement to GURI No 124 of 29 May 1999), containing national implementing measures for the purposes of Article 12 of the directive and, in particular, designating vulnerable zones in accordance with Article 3(2) thereof. The Italian Government considers that, by reason of that decree (which is annexed to its defence in the instant case), it has complied with the judgment in Case C-195/97 *Commission* v *Italy*.

## The admissibility of the application

*Arguments of the parties*

21 The Italian Government submits that the application is inadmissible on the ground that the complaints set out therein differ significantly from those in the reasoned opinion. According to the Italian Government:

— the basic complaint concerning the failure to implement the directive has been implicitly discontinued;

— the complaint concerning Article 5 of the directive has been amended: what is complained of is no longer the lack of programmes, but the fact that there are no action programmes having the features, and meeting the conditions, provided for in Article 5(1);

— the complaint concerning Article 6 of the directive has been amended and now relates to the fact that the monitoring was not fully or correctly carried out;

— the complaint concerning Article 10 of the directive has been amended and now concerns the failure to submit a complete report.

22 According to the Italian Government, the Commission made those amendments after it had considered the report of 18 September 1998. It argues that the Commission should properly have made such amendments during the pre-litigation stage and, therefore, ought to have sent a new reasoned opinion or, at the very least, a supplementary opinion, rather than bringing an action which was materially different from the complaint contained in the reasoned opinion of 19 February 1998. The application calls in question for the first time the actions which the Italian Republic took in order to implement the directive and poses a quite new set of requirements for Italy in the organisation of its defence.

23 In its rejoinder, the Italian Government reproduces its argument that the Commission, by seeking a declaration from the Court that the Italian Government has failed to submit a complete report, is asking the Court to adjudicate on the observations relating to the report submitted after the reasoned opinion. One of the main purposes of the reasoned opinion is to enable a Member State to prevent proceedings being taken against it before the Court by acting in accordance with the view taken by the Commission within the period fixed by the opinion. The Italian Government has been denied that possibility, which is safeguarded by the Treaty.

24 At the hearing, the Italian Government also relied on breach of the *non bis in idem* rule. The Commission is asking the Court for a further ruling that the Italian Republic has failed to comply with its obligations under the directive, a ruling already made by the Court in Case C-195/97 *Commission* v *Italy*.

25 The Commission disputes that the complaints set out in the application are any different from those in the reasoned opinion. According to the Commission, the complaints in the opinion concern not so much the lack of action programmes, monitoring operations and reporting in general, but, more specifically, the fact that the latter do not meet the requirements of the directive.

26 Although the two-month time-limit fixed in the reasoned opinion had expired some time previously, the Commission examined the report of 18 September 1998 to ascertain whether it might contain any information showing that the Italian Republic had complied with the obligations concerned, namely the establishment of action programmes in accordance with Article 5 of and Annex III to the directive, the monitoring of freshwater required under Article 6 and Annex IV and the preparation of the report referred to in Article 10 of and Annex V to the directive. It was apparent from that examination that the Italian authorities had taken some measures to implement those provisions but that the obligations mentioned above had not at that stage been carried out as required by the directive.

*Findings of the Court*

27 So far as the breach of the *non bis in idem* rule is concerned, it is appropriate to bear in mind that, in the operative part of the judgment in Case C-195/97

*Commission* v *Italy*, the Court held that, by failing to adopt and to 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 had failed to fulfil its obligations under Article 12(1) of the directive.

28 The use of the adverbial phrase 'in particular' might imply that the judgment in Case C-195/97 *Commission* v *Italy* concerns the directive in its entirety. However, an examination of the pleas and forms of order sought by the parties and of the reasons expounded by the Court in support of the operative part of the judgment clearly shows that the judgment relates solely to the obligations arising under Article 3(2) and Article 12(1) of the directive.

29 Since in the present proceedings the Commission has not proceeded with the complaint that it made in the reasoned opinion of 19 February 1998 concerning the failure to implement the directive, the present action concerns solely the provisions that were not called in question in the case culminating in the judgment in Case C-195/97 *Commission* v *Italy*, namely Articles 5, 6 and 10 of the directive, and thus does not violate the *non bis in idem* rule.

30 As regards the alleged amendment of the Commission's other complaints, it must be pointed out that the complaints set out in the reasoned opinion concern in particular the Italian Republic's non-compliance with the obligations laid down in Articles 5, 6 and 10 of the directive. At the time when the reasoned opinion was drawn up, the Commission was complaining that it did not have the information that was needed to ascertain whether the abovementioned obligations had actually been complied with, since the Italian Republic had failed to submit the information required by those articles.

31 Although information obtained subsequently, and in particular the report of 18 September 1998, enabled the Commission to make its complaints more

specific, it is nevertheless the case that the subject-matter of the complaints raised in the proceedings remains in substance the same, namely compliance with the obligations arising under Articles 5, 6 and 10 of the directive (see, to the same effect, Case 178/84 *Commission* v *Germany* ('*Beer Purity*') [1987] ECR 1227, paragraph 22). As is evident from the conduct of the written and oral procedure before the Court, the Member State concerned has been kept sufficiently informed of the complaints and has had ample opportunity to defend itself in accordance with the provisions of Article 169 of the Treaty.

32 Therefore, the objection of inadmissibility raised by the Italian Government cannot be accepted.

**Substance**

33 The Commission raises three complaints as regards the Italian Republic. The first concerns a failure to establish action programmes meeting the requirements of Article 5 of the directive. The second is based on a failure to carry out the monitoring operations required by Article 6 fully and correctly. The third alleges that there was a failure to draw up and submit a full report of the kind required by Article 10 of the directive. It is appropriate to examine the last complaint first.

*The complaint concerning Article 10 of the directive*

34 The Commission observes that Article 10 of the directive requires Member States to submit a report to the Commission every four years, containing the

information outlined in Annex V to the directive. The first report was to cover the period from 20 December 1991 to 20 December 1995 and was to be submitted to the Commission within six months of the second date, that is by 20 June 1996.

35 The Commission claims that the Italian Republic had not sent any report at all by 20 June 1996. Furthermore, neither the documents enclosed with the letter of 16 July 1997 nor the report of 18 September 1998, which were submitted by the Italian authorities, met the requirements of the directive.

36 The Italian Government replies that in the report of 18 September 1998, it set out a concise outline showing nitrate pollution recorded and the measures taken to attain the objectives laid down in Article 1 of the directive. The fact that the report is fairly succinct is not incompatible with the requirements of paragraphs 3 and 4 of Annex V to the directive. Those paragraphs deal respectively with monitoring results and action programmes and require only that the report should contain a summary.

37 In those circumstances, the Italian Government contends that Article 10 of and Annex V to the directive do not contain anything which is sufficiently specific to support a finding of infringement consisting not in the fact that there is no report but in the fact that the report is incomplete.

38 In that regard, it should be borne in mind that, according to settled case-law, the question whether a Member State has failed to fulfil its obligations must be determined by reference to the situation prevailing in the Member State at the end of the period laid down in the reasoned opinion and the Court cannot take account of any subsequent changes (see Case C-207/00 *Commission* v *Italy* [2001] ECR I-4571, paragraph 27).

39 It follows that in order to assess whether there was a failure to comply with Article 10 of the directive, it is not necessary to take the report of 18 September 1998 into account, since it was submitted several months after the expiry of the time-limit laid down in the reasoned opinion. For that purpose, all that needs to be taken into account are the documents submitted to the Commission by the Italian authorities on 16 July 1997.

40 However, as the Advocate General has observed in point 26 of his Opinion, since the implementing measures described in the report were not necessarily taken out of time, they might be able to be taken into consideration for the purposes of evaluating the allegation of failure to comply with Articles 5 and 6 of the directive.

41 The Court notes that the documents sent to the Commission by the Italian authorities on 16 July 1997 do not contain any account of preventive action taken pursuant to Article 4 of the directive, as required by paragraph 1 of Annex V thereto. Furthermore, the documents do not contain a map showing the waters and zones identified, as required by paragraph 1 of Annex V to the directive. Moreover, the documents concern only the two autonomous provinces and seven of the nineteen regions making up the Italian Republic. The information contained in the documents is too incomplete to amount to a summary of the monitoring results or a summary of the action programmes under paragraphs 3 and 4 of Annex V to the directive.

42 Consequently, it must be held that, by having failed to submit to the Commission a report of the kind required by Article 10 of the directive, the Italian Republic failed to fulfil its obligations under that provision.

*The complaint based on Article 5 of the directive*

43 The Commission observes that Article 5 of the directive requires Member States to establish action programmes for vulnerable zones within two years of the initial designation of those zones. That article and Annex III to the directive specify the features that the action programmes must include. At the time when these proceedings were commenced, the Italian Republic had not adopted any action programmes having those features. The measures taken by the Italian authorities were too diverse or too general to comply with the obligation.

44 In the annex to its defence, the Italian Government produces Legislative Decree No 152, which was enacted after the proceedings had been commenced and which, *inter alia*, designates vulnerable zones on a national scale in accordance with Article 3 of the directive. It argues that, if the present plea is founded on the preliminary requirement that the Italian Republic should identify vulnerable zones, what is at issue is infringement of Article 3 of the directive, which is outside the scope of the present proceedings for failure to fulfil obligations.

45 That argument must be rejected. It must be observed that Member States may not plead their late implementation of a directive as justification for failure to fulfil, or late fulfilment of, other obligations imposed by the directive (see Case C-274/98 *Commission* v *Spain* [2000] ECR I-2823, paragraph 22).

46 Further, the Italian Government contends that the plea relied on by the Commission is ambiguous and general: ambiguous because it is not possible to see clearly whether it encompasses the complete lack of programmes with regard to the regions that have not been designated and general because it does not precisely indicate the purported lacunae with specific regard to the programmes adopted.

47 It is settled case-law that in the context of proceedings under Article 169 of the Treaty for failure to fulfil obligations it is for the Commission to prove the existence of the alleged failure, and it may not rely on any presumption for that purpose (see, *inter alia*, Case C-214/98 *Commission* v *Greece* [2000] ECR I-9601, paragraph 42).

48 The documents which the Italian authorities sent to the Commission on 16 July 1997 and the report of 18 September 1998 do not say anything about the adoption of measures which might form part of an action programme within the meaning of Article 5 of the directive so far as the regions of Apulia and Calabria are concerned. Likewise, it appears from those documents that virtually no measures were taken as regards the regions of Abruzzi and Marche. It is also apparent that if measures of the type required by the directive were planned for the regions of Liguria and Campania, such measures had not been taken by 18 September 1998. Lastly, those documents describe only *ad hoc* measures as regards the regions of Lazio and Sicily. Consequently, so far as all those regions are concerned, it is quite apparent from the documents before the Court that the Italian authorities did not establish action programmes within the meaning of Article 5 of the directive within the prescribed period.

49 However, so far as the other regions and the autonomous provinces of the Italian Republic are concerned, the documents of 16 July 1997 and the report of 18 September 1998 describe a series of measures capable of forming part of action programmes within the meaning of Article 5 of the directive.

50 The fact that such measures were taken before vulnerable zones were designated by Legislative Decree No 152 does not prevent the measures from constituting action programmes under Article 5 of the directive. As the Advocate General observes in point 48 of his Opinion, if there is a delay in formally designating vulnerable zones, the directive does not preclude preparatory measures designed to establish action programmes from being taken.

51 The Commission does not establish specifically how the measures taken in the regions and provinces concerned are inadequate, confining itself to general arguments on that point. In light of the documents before the Court, it must be held that in that regard the application lacks the necessary specificity and is not supported by adequate proof.

52 It follows from the foregoing considerations that by having failed to establish action programmes within the meaning of Article 5 of the directive, the Italian Republic failed to fulfil its obligations under that provision.

*The complaint concerning Article 6 of the directive*

53 According to the Commission, the documents provided by the Italian authorities show that in at least five regions (Liguria, Lombardy, Veneto, Marche and Campania) monitoring was not carried out in accordance with the requirements of Article 6 of the directive, that in five other regions (Piedmont, Umbria, Lazio, Molise and Sicily) and in the two autonomous provinces (Trento and Bolzano) the way in which the monitoring was carried out was not entirely satisfactory and that in three other regions (Abruzzi, Apulia and Calabria), the complete lack of information indicates that monitoring obligations were not complied with. In those circumstances, the Commission concludes that the Italian Republic failed to fulfil the obligation imposed by Article 6 of the directive.

54 The Italian Government contends that the operations at issue are merely executive and that their function, which is to enable vulnerable zones to be identified, is preliminary to implementation of the directive. Since the relevant obligation is purely designed to ensure that Article 3 of the directive is implemented, compliance therewith cannot be assessed separately from the

ultimate obligation. In other words, there is a failure to comply with Article 6 of the directive only in so far as shortcomings in the monitoring operations entail a failure to comply with Article 3 thereof. The plea is thus unfounded, inasmuch as the Commission does not establish that the alleged inadequacy of the operations concerned has resulted in infringement of Article 3 of the directive. In the alternative, the Italian Government argues that the plea is unfounded, since it is general, unspecific and has not been proved. The fact that the report may be incomplete cannot serve as proof of failure to take the measures prescribed by Article 6 of the directive. It adds that monitoring was carried out under Article 6(1)(a) of and Annex IV to the directive and thus in the context of implementation of the other directives referred to therein. Information on the subject had already been sent in the form of 'standardised information'.

55 The Commission replies that the obligation laid down by Article 6 of the directive is a specific obligation, which may be distinguished from other obligations imposed by the directive and which may be infringed in its own right. It adds that for Article 6 to be properly implemented, national authorities must comply with the time-limits and methods laid down therein, and that it is not sufficient to refer to the monitoring methods established by other Community directives. From that point of view, it is of little import that the Italian authorities have already sent the Commission the results of monitoring operations in the form of 'standardised information'. The network of sampling stations, the frequency of samples and the treatment of the data, which are provided for by the directive at issue, are different from those described by the directives which refer to 'standardised information'. Finally, as to the lack of proof, the Commission claims that during the pre-litigation procedure, it asked the Italian authorities to provide it with information that could demonstrate that the obligation laid down in Article 6 of the directive had been complied with. The information supplied clearly showed that the monitoring operations in question had not been carried out in accordance with the requirements of the directive.

56 The Italian Government replies that the Commission has not specified which of the information supplied shows that the monitoring concerned was not, in at least

five regions, carried out in accordance with the directive. It submits that the Commission cannot prove a failure to fulfil obligations by relying on a shortage of information. A lack of information on the action taken to implement a directive cannot amount to proof that the action has not been taken, unless the fact that information has not been provided amounts to a breach of an obligation to supply information. There is no obligation on the Member State to inform the Commission about implementation of the monitoring required by Article 6 of directive. Moreover, the Italian Government denies that it ever received a request to that effect from the Commission.

57 First, it is appropriate to point out that the obligation to monitor nitrate concentration laid down by Article 6 of the directive exists independently of the obligation laid down in Article 3 thereof to designate vulnerable zones. In particular, although the obligation to carry out monitoring operations is prescribed at the outset for the purpose of designating vulnerable zones, it remains in existence after the initial designation has taken place in order that the list drawn up may be revised.

58 Second, it is true, as the Italian Government rightly observes, that Article 6 of the directive does not require Member States to inform the Commission of the steps that have been taken to implement that provision. However, Article 10 of, and paragraph 3 of Annex V to, the directive provide that Member States are to submit to the Commission a report containing inter alia 'a summary of the monitoring results obtained pursuant to Article 6' of the directive.

59 It was specifically because there was no such report that the Commission, in its letter of formal notice and in the reasoned opinion, claimed that it did not have the information that it needed to enable it to ascertain whether the Italian Republic had implemented the monitoring measures required by Article 6 of the directive. By giving Italy notice to submit its observations and by asking it to act in accordance with the reasoned opinion, the Commission in fact asked for the relevant information to be sent.

60 It was in response to those requests that the Italian authorities sent the Commission the documents on 16 July 1997 and the report of 18 September 1998. Having regard to those documents, the Court finds that the Italian authorities provided the Commission with information of the kind required by Article 10 of, and paragraph 3 of Annex V to, the directive in respect of all the regions and autonomous provinces of the Italian Republic, apart from three, namely, Abruzzi, Apulia and Calabria, regions in respect of which no information was supplied.

61 The fact that there is no information at all about those three regions in the documents before the Court may be regarded as sufficient evidence of failure to comply with Article 6 of the directive. As regards the other regions and autonomous provinces, it was incumbent upon the Commission to prove the allegation that the obligation has not been fulfilled and to place before the Court the information needed to enable it to determine whether the obligation has not been fulfilled (see, in particular, Case C-263/99 *Commission* v *Italy* [2001] ECR I-4195, paragraph 27).

62 In those circumstances, it must be held that the Commission has failed to provide any proof of its allegation that the monitoring operations were not carried out in accordance with Article 6 of the directive in the regions of Liguria, Lombardy, Veneto, Marche and Campania. Nor does the Commission specify the reasons why the monitoring was not entirely satisfactory in the two provinces of Trento and Bolzano and in the five regions of Piedmont, Umbria, Lazio, Molise and Sicily. Nor does it provide proof of that allegation.

63 It follows from all the foregoing considerations that, by having failed to carry out the monitoring operations prescribed by Article 6 of the directive, the Italian Republic has failed to fulfil its obligations under that provision.

## Costs

64 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 Commission has applied for costs and the Italian Republic has been unsuccessful, the latter must be ordered to pay the costs.

On those grounds,

THE COURT (Sixth Chamber),

hereby:

1. Declares that, by having failed:

— to establish action programmes within the meaning of Article 5 of Council Directive 91/676/EEC of 12 December 1991 concerning the protection of waters against pollution caused by nitrates from agricultural sources,

— to carry out the monitoring operations prescribed by Article 6 of the said directive, and

— to submit to the Commission a report of the kind required by Article 10 of the directive,

the Italian Republic failed to fulfil its obligations under those provisions of Directive 91/676.

2. Orders the Italian Republic to pay the costs.

Colneric Gulmann Puissochet

Skouris Cunha Rodrigues

Delivered in open court in Luxembourg on 8 November 2001.

R. Grass F. Macken

Registrar President of the Sixth Chamber