JUDGMENT OF THE COURT (Fifth Chamber)
11 March 2004 *

In Case C-396/01,

Commission of the European Communities, represented by R.B. Wainwright, acting as Agent, with an address for service in Luxembourg,

applicant,

v

Ireland, represented by D.J. O'Hagan, acting as Agent, with an address for service in Luxembourg,

defendant,

APPLICATION for a declaration that:

by failing, within the time-limits provided for in Council Directive 91/676/EEC of 12 December 1991 concerning the protection of waters against pollution caused by nitrates from agricultural sources (OJ 1991 L 375, p. 1),

* Language of the case: English.

— to identify completely waters pursuant to Article 3(1) in accordance with the criteria set out in Annex I and to notify these to the Commission,

— to designate vulnerable zones pursuant to Article 3(2) and/or Article 3(4) thereof,

— to establish action programmes in accordance with Article 5 of the Directive, and

— to carry out correctly and completely monitoring and review of waters in accordance with Article 6(1)(a), (b) and (c) of the Directive,

Ireland has failed to fulfil its obligations thereunder.

THE COURT (Fifth Chamber),

composed of: P. Jann, acting for the President of the Chamber, C.W.A. Timmermans and S. von Bahr (Rapporteur), Judges,

Advocate General: L.A. Geelhoed,
Registrar: R. Grass,

having regard to the report of the Judge-Rapporteur,

after heaving the Opinion of the Advocate General at the sitting on 26 June 2003,

gives the following

Judgment

1 By application lodged at the Court Registry on 10 October 2001, the Commission of the European Communities brought an action under Article 226 EC seeking a declaration that:

by failing, within the time-limits provided for in 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, 'the Directive'),

— to identify completely waters pursuant to Article 3(1) in accordance with the criteria set out in Annex I and to notify these to the Commission,

— by failing to designate vulnerable zones pursuant to Article 3(2) and/or Article 3(4) thereof,

— by failing to establish action programmes in accordance with Article 5 of the Directive, and

— by failing to correctly and completely carry out monitoring and review of waters in accordance with Article 6(1)(a), (b) and (c) of the Directive,

Ireland has failed to fulfil its obligations thereunder.

Legal background

2 Article 1 of the Directive states that the objective of the Directive is to reduce water pollution caused or induced by nitrates from agricultural sources and to prevent further such pollution.

3 Under Article 2(j) of the Directive, 'pollution' means 'the discharge, directly or indirectly, of nitrogen compounds from agricultural sources into the aquatic environment, the results of which are such as to cause hazards to human health, harm to living resources and to aquatic ecosystems, damage to amenities or interference with other legitimate uses of water'.

4 Article 3 of the Directive provides:

'1. Waters affected by pollution and waters which could be affected by pollution if action pursuant Article 5 is not taken shall be identified by the Member States in accordance with the criteria set out in Annex I.

2. Member States shall, within a two-year period following the notification of this Directive, designate as vulnerable zones all known areas of land in their territories which drain into the waters identified according to paragraph 1 and which contribute to pollution. They shall notify the Commission of this initial designation within six months.

3. When any waters identified by a Member State in accordance with paragraph 1 are affected by pollution from waters from another Member State draining directly or indirectly in to them, the Member States whose waters are affected may notify the other Member States and the Commission of the relevant facts.

The Member States concerned shall organise, where appropriate with the Commission, the concertation necessary to identify the sources in question and the measures to be taken to protect the waters that are affected in order to ensure conformity with this Directive.

4. Member States shall review and if necessary revise or add to the designation of vulnerable zones as appropriate, and at least every four years, to take into account changes and factors unforeseen at the time of the previous designation. They shall notify the Commission of any revision or addition to the designations within six months.

5. Member States shall be exempt from the obligation to identify specific vulnerable zones, if they establish and apply action programmes referred to in Article 5 in accordance with this Directive throughout their national territory.'

5 Article 5(1) to (4) provides as follows:

'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.'

6 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 [Council] Directive 75/440/EEC [of 16 June 1975 concerning the quality required of surface water intended for the abstraction of drinking water in the Member States (OJ 1975 L 194, p. 26)] 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.'

7 Annex I of the Directive, entitled 'Criteria for identifying waters referred to in Article 3(1)', provides:

'A. Waters referred to in Article 3(1) shall be identified making use, inter alia, of the following criteria:

1. whether surface freshwaters, in particular those used or intended for the abstraction of drinking water, contain or could contain, if action pursuant to Article 5 is not taken, more than the concentration of nitrates laid down in accordance with [Council] Directive 75/440/EEC [of 16 June 1975 concerning the quality required of surface water intended for the abstraction of drinking water in the Member States (OJ 1975 L 194, p. 26)];

2. whether groundwaters contain more than 50 mg/l nitrates or could contain more than 50 mg/l nitrates if action pursuant to Article 5 is not taken;

3. whether natural freshwater lakes, other freshwater bodies, estuaries, coastal waters and marine waters are found to be eutrophic or in the near future may become euthropic if action pursuant to Article 5 is not taken.

B. In applying these criteria, Member States shall also take account of:

1. the pyhsical and environmental characteristics of the waters and land;

2. the current understanding of the behaviour of nitrogen compounds in the environment (water and soil);

3. the current understanding of the impact of the action taken pursuant to Article 5.'

8 Under Article 12(1) of the Directive, the Member States are to bring into force the laws, regulations and administrative provisions necessary to comply with it within two years of its notification. According to a footnote to that article, the Directive was notified to the Member States on 19 December 1991.

The pre-litigation procedure

9 On 29 May 1995, the Commission sent a letter of formal notice to Ireland concerning its failure to notify the laws, regulations and administrative provisions it had adopted to comply with the Directive.

10 By letter of 17 July 1995 the Irish authorities informed the Commission of the measures they had taken to comply with the Directive. In that letter they stated that they were satisfied that, further to monitoring and assessment of water quality data, no waters coming within Article 3(1) of the Directive had been identified and that, in those circumstances, there was no need to designate vulnerable zones under Article 3(2). They contended that, in the absence of any designated vulnerable zones, Article 5 of the Directive was not applicable.

11 On 21 October 1996 and 14 July 1999, the Commission sent two supplementary letters of formal notice to Ireland.

12 The Irish authorities replied by letter of 25 November 1999, confirming that an expert panel had identified waters in several counties for the purposes of Article 3 of the Directive, that the exercise of identifying waters was continuing, and that work was in progress to make designations for the purposes of Article 3(2) of the Directive.

13 Between 1998 and 2000, the Commission drew up a study in relation to Ireland entitled: 'Verification of the vulnerable zones identified under the Nitrates Directive' ('the Verification Study').

14 On 25 July 2000, in the light of the Verification Study and other considerations, the Commission sent a third supplementary letter of formal notice to Ireland.

15 As no reply was received with regard to the substance of that letter the Commission sent a reasoned opinion to the Republic of Ireland on 9 February 2001, in which the claims made were the same as those made in the application and the Member State was called upon to take the measures necessary to comply with it within two months of its notification.

16 On 1 March 2001, the Irish authorities submitted a report on the period from 1996 to 1999 pursuant to Article 10 of the Directive.

17 By letter of 6 April 2001, the Irish Government replied to that reasoned opinion, making reference to the publication, in March 2001, of a report prepared by Ireland's Environmental Protection Agency ('the EPA') under the title 'An Assessment of the Trophic Status of Estuaries and Bays in Ireland'. That report confirmed that 13 named tidal waters were eutrophic within the meaning of the Directive and assessed four named tidal waters as being potentially eutrophic. The Irish authorities stated that all eutrophic and potentially eutrophic estuarine waters were being considered for possible designation as affected waters, and for possible designation of their relevant drainage areas as nitrate vulnerable zones.

18 By letter dated 30 July 2001, Ireland notified the Commission of four bye-laws relating to agricultural activities adopted by the authorities of the counties of Cavan, Westmeath, Cork and Tipperary (North Riding).

19 Taking the view that, notwithstanding the information provided by the Irish authorities, the situation remained unsatisfactory, the Commission decided to bring the present action before the Court.

The action

The first head of claim: breach of Article 3(1) of the Directive

Surface waters coming within the scope of paragraph A(1) of Annex I to the Directive

20 In the first part of this first head of claim, the Commission explains that paragraph A(1) of Annex I to the Directive refers to two main categories of surface waters used or intended for the abstraction of drinking water: first, waters containing a concentration of nitrates of more than 50 mg/l and, second, waters which could contain a concentration of more than 50 mg/l if action pursuant to Article 5 of the Directive is not taken.

21 As regards the first category, the Commission notes that, in their letter of 17 July 1995 replying to the letter of formal notice of 29 May 1995, the Irish authorities confirmed that 2% of all the samples from water courses in the period from 1987 to 1990 showed concentrations greater than 50 mg/l. However, none of the waters concerned was identified by Ireland for the purposes of Article 3(1) of the Directive. The Commission argues that the Member State is seeking to justify its failure to identify such waters by the fact that the nitrate concentrations were linked to miscellaneous point sources of pollution.

22 As regard waters in the second category, the Commission states that, according to a 1994 study by the Irish authorities, there are surface waters in Ireland that should be identified for the purposes of Article 3(1) of the Directive. The Commission also refers to evidence of upward trends in nitrate levels linked to agriculture in several Irish river catchments. In that regard, it refers to the report of the EPA concerning the period from 1996 to 1999.

23 Further, the Commission points out that, as regards the criteria in paragraph A(1) of Annex I to the Directive, the Verification Study, carried out by the Commission and finalised in March 2000, identified a number of rivers that should have been identified for the purposes of Article 3(1) of the Directive.

24 In its defence, the Republic of Ireland accepts that point agricultural sources come within the ambit of the Directive. However it submits that pollution emanating from defective farm effluent or waste storage facilities can be effectively remedied by elimination of the pollution source. It is only where it is not possible to remedy the pollution in that way, that it is necessary to undertake designation of those waters.

25 In the present case, it is clear from the wording of Article 3(1) and (2) and Article 5 of the Directive, read in conjunction with paragraphs A(1) and A(2) of Annex I, that the Member States are obliged to identify as waters affected by pollution, or as waters which could be affected by pollution, not only waters intended for human consumption but also all surface freshwaters and groundwaters which have or could have a nitrate concentration in excess of 50 mg/l (Case C-69/99 *Commission* v *United Kingdom* [2000] ECR I-10979, paragraph 23).

26 According to the detailed evidence adduced by the Commission, which is not disputed by Ireland, it has failed to identify the waters referred to in Article 3(1) of the Directive in accordance with the criteria listed in paragraph A(1) of Annex I thereto.

27 It follows that the first part of the first head of claim is well founded.

Groundwaters coming within the scope of paragraph A(2) of Annex I to the Directive

28 In the second part of its first head of claim, the Commission argues that, just as paragraph A(1) of Annex I to the Directive refers to two main categories of surface water, paragraph A(2) of Annex I refers to two categories of groundwater: first, groundwater containing a concentration of nitrates of more than 50 mg/l; second, groundwater which could contain more than this concentration if action pursuant to Article 5 of the Directive is not taken.

29 As regards the first category, the Commission points out that official Irish drinking water reports covering the period from 1991 onwards confirm the existence of certain groundwaters containing nitrate levels in excess of 50 mg/l. According to the Commission, it appears that Ireland is seeking to justify its failure to identify groundwaters with high nitrate levels on the ground that they have been linked to miscellaneous point sources of pollution and not to diffuse agricultural pollution.

30 As regards the groundwaters in the second category mentioned in paragraph 28 of this judgment, the Commission makes clear that official reports by the Irish authorities confirm that there are groundwaters in Ireland that should be identified for the purposes of Article 3(1) of the Directive. In addition, it states that the Verification Study identified a number of specific groundwaters that should have been identified for such purposes.

31 In that connection, the Commission states that, in their letter of 6 April 2001 replying to the reasoned opinion, the Irish authorities identified 13 groundwaters as polluted for the purposes of Article 3(1) although the names of these waters were not formally communicated to it. It submits that the 13 groundwaters, which are situated in 5 counties, are geographically more restricted that the groundwaters referred to in the Verification Study, which covers 11 counties.

32 In its defence, Ireland contends that monitoring results from larger abstractions are a better indicator of true groundwater status than results from smaller schemes. It states that it none the less intends to ensure that future monitoring regimes will take full account of small drinking water supplies and nitrate contamination from point agricultural sources.

33 As is clear from paragraph 25 of this judgment, all surface freshwaters and groundwaters which have or could have a nitrate concentration in excess of 50 mg/l must be identified for the purposes of Article 3(1) and (2) and Article 5 of the Directive, read in conjunction with paragraphs A(1) and A(2) of Annex I thereto.

34 According to the detailed evidence adduced by the Commission, which is not disputed by Ireland, it has failed to identify the waters referred to in Article 3(1) of the Directive in accordance with the criteria listed in paragraph A(1) of Annex I thereto.

35 Under the circumstances, the second part of the first head of claim is well founded.

Eutrophic natural freshwater lakes, other freshwater bodies, estuaries, coastal waters and marine waters or those at risk of becoming eutrophic coming within the scope of paragraph A(3) of Annex I to the Directive

Estuaries, coastal waters and marine waters

36 In the third part of its first head of claim, the Commission points out that, in its Verification Study, it listed a number of rivers that should have been identified for the purposes of Article 3(1) of the Directive in conjunction with paragraph A(1) of Annex I thereto.

37 According to the Commission, the EPA report confirms the eutrophication of most of the zones mentioned in the Verification Study. It points out that Ireland has not, however, formally identified the estuaries or coastal and marine waters affected by pollution.

38 In its defence, Ireland states that it has taken account of the EPA's Assessment of the trophic status of estuaries and bays in Ireland. Although it accepts that it has not as yet formally identified the affected estuaries, coastal waters and marine waters identified in that report as affected waters and vulnerable zones under the Directive, it intends to address that situation in the near future.

39 In that regard, suffice it to note that Ireland accepts that it has failed to identify the estuaries and coastal and marine waters which are eutrophic or which may become eutrophic in the near future for the purposes of Article 3(1) of the Directive in conjunction with paragraph A(3) of Annex I thereto.

40 It follows that the third part of the first head of claim is well founded in so far as it concerns estuaries and coastal and marine waters.

Natural freshwater lakes and other freshwater bodies

41 As regards natural freshwater lakes and other freshwater bodies, the Commission submits that it is evident from the many official reports published to date that there is a widespread and worsening problem of eutrophication in Ireland. It nevertheless makes clear that the Irish authorities have failed to identify eutrophic freshwaters or freshwaters at risk of eutrophication in accordance with Article 3 (1) and paragraph A(3) of Annex I to the Directive. This reflects the view of the Irish authorities that the nutrient phosphorous is the principal factor in such eutrophication and that the role of nitrates does not warrant action pursuant to the Directive. The Commission indicates that it does not concur with this view. According to the Commission, it is evident from paragraph A(3) of Annex I to the Directive that the Community legislature contemplated the identification of such waters for the purposes of Article 3(1) of the Directive.

42 In its defence, Ireland points out that, in the light of the scientific data available to it, phosphate input is the chief cause of eutrophication of inland freshwaters in Ireland. It contends that the reports drawn up by the EPA attributed the eutrophication of inland surface waters in Ireland to the enrichment of rivers and lakes by phosphates, although there was an upward trend in nitrate levels in a number of rivers and streams. In response to those reports, Ireland has promoted a comprehensive national strategy for monitoring the quality of all waters in each river basin district, to combat eutrophication in rivers and lakes caused by excessive inputs of phosphorus.

43 In that regard, it must be observed that, under Article 3(1) of the Directive, in conjunction with paragraph A(1) of Annex I thereto, Member States are required to identify eutrophic freshwaters or freshwaters at risk of eutrophication in the near future if action pursuant to Article 5 of the Directive is not taken.

44 Ireland does not dispute that it has failed to identify freshwaters at risk of eutrophication in breach of the requirements of the Directive.

45 It follows that the third part of the first head of claim is well founded in so far as it concerns natural freshwater lakes and other bodies of freshwater.

46 Accordingly, it must be held that the first head of claim is well founded in its entirety in so far as it concerns the identification of waters pursuant to Article 3(1) of the Directive in conjunction with paragraph A of Annex I thereto.

The second head of claim: breach of Article 3(2) and/or Article 3(4) of the Directive

47 According to the Commission, in breach of the requirements of Article 3(2) and/or Article 3(4) of the Directive, Ireland has not designated vulnerable zones. It submits that, since it has been established that there are waters in Ireland affected by pollution within the meaning of the Directive or likely to be so affected, that Member State has failed to fulfil its obligations under that Directive.

48 In that regard, suffice it to note that Ireland accepts that it did not designate vulnerable zones in accordance with Article 3(2) and/or Article 3(4) of the Directive within the prescribed periods.

49 It follows that the second head of claim is well founded.

The third head of claim: breach of Article 5 of the Directive

50 The Commission submits that Ireland has failed to establish action programmes in respect of designated vulnerable zones to prevent and reduce pollution of waters caused or induced by nitrates from agricultural sources in accordance with Article 5 of the Directive.

51 Ireland contends that it has taken measures at both local and national level to prevent and reduce pollution of waters caused or induced by nitrates from agricultural sources. The measures taken at national level might be considered

constituent elements of an action programme within the meaning of Article 5 of the Directive. It points out that, where they establish and apply throughout their national territory the action programmes referred to in Article 5, under Article 3 (5), Member States are not required to designate specific vulnerable zones under Article 3(2) and/or Article 3(4) of the Directive. According to Ireland, the identification of waters within the meaning of Article 3(1) of the Directive is no longer necessary because those action programmes have been established and applied throughout the territory of a Member State.

52 As regards the national action programmes, Ireland submits that all farmers claiming aid under direct payment schemes, that is to say, most of the agricultural sector, must comply with an information booklet on good farming practice. It also points out that the Rural Environment Protection Scheme is one of the measures adopted to improve and maintain satisfactory water quality conditions in the less intensively farmed areas. It adds that local authorities have the power to compel farmers to prepare nutrient management plans and to carry out farm surveys to pinpoint pollution sources.

53 Ireland points out, further, that there are also local action programmes. It refers to four bye-laws adopted by Westmeath, Cavan and Tipperary (North Riding) County Councils. It adds that other counties have adopted similar bye-laws or intend to do so shortly.

54 However, Ireland accepts that all those measures were not in place on the date when the reasoned opinion was issued by the Commission and that they have not fully complied with the requirements of Article 5 of the Directive.

55 The Commission disputes Ireland's claim that it has already fulfilled most of the obligations imposed by Article 5 of the Directive.

56 In that connection, it must be observed that, under Article 5 of the Directive, the Member States must adopt action programmes to prevent and reduce pollution of waters caused or induced by nitrates from agricultural sources in the zones designated vulnerable pursuant to Article 3(2) and Article 3(4) of the Directive.

57 A Member State may establish an action programme in respect of all the vulnerable zones on its territory or different programmes for different vulnerable zones or parts of zones in that territory.

58 The action programmes are to be implemented within four years of their being drawn up and must include inter alia the mandatory measures referred to in Annex III to the Directive. Those measures must include the rules set out in detail in that Annex concerning periods when the land application of certain types of fertilizer is prohibited, the capacity of storage vessels for livestock manure and the limitation of the land application of fertilizers, taking into account the characteristics of the vulnerable zone concerned, in order to ensure that, for each farm or livestock unit, the amount of livestock manure applied to the land each year does not exceed a specified amount per hectare.

59 It is clear that the measures cited by the Irish Government do not, viewed overall, meet the requirements of Article 5 of the Directive.

60 Such a series of measures, varying in scale and applicability from region to region and not constituting an organised and coherent system intended to meet a specific objective cannot be described as an 'action programme' within the meaning of Article 5 of the Directive.

61 Nor do the measures cited by the Irish Government, viewed individually, appear to be of a nature to constitute such action programmes.

62 First, as regards the powers granted to local authorities to carry out surveys on farms in order to pinpoint sources of pollution and to compel farmers to prepare nutrient management plans, suffice it to note that, by definition, such surveys cannot be considered to be action programmes within the meaning of Article 5 of the Directive.

63 Next, as regards the information booklet on good agricultural practice and the Rural Environment Protection Scheme, suffice it to note that, according to statements by the Commission, which are not disputed by Ireland, they do not comprise mandatory measures as required by Article 5 of the Directive.

64 Finally, as regards the bye-laws adopted by four Irish counties, it must be observed that, although those bye-laws contain some of the measures listed in Annex III to the Directive, they do not appear to meet all the conditions laid down by Article 5 thereof in order to be considered action programmes within the meaning of that provision. According to the file, the bye-laws of Counties Cavan, Westmeath and Tipperary do not apply to all farmers in a given zone. In any event, it is common ground that those bye-laws do not cover all the zones which should have been designated as vulnerable zones pursuant to Article 3 of the Directive.

65 Accordingly, it must be held that the third head of claim, alleging breach of Article 5 of the Directive, is well founded.

The fourth head of claim: breach of Article 6(1)(a) to (c) of the Directive

66 The Commission points out that, for the purpose of designating and revising the designation of vulnerable zones, Article 6 of the Directive requires Member States to monitor the nitrate concentration in freshwaters and, in accordance with a precise timetable, review the eutrophic state of their fresh surface waters, estuarial and coastal waters.

67 As regards the initial monitoring provided for by Article 6(1)(a) of the Directive, the Commission observes that the legislation relied on by Ireland, that is to say Article 22 of the Local Government (Water Pollution) Act 1977, in no way requires the Irish Minister for the Environment to observe the time-limits and reference methods laid down by the Directive. In particular, the instructions given by that Minister to the local authorities, according to which pollution from point agricultural sources was not covered by that monitoring and drinking water supplies should be considered to have low priority for monitoring purposes, were in breach of the Directive.

68 Given the absence of information concerning the transposition of Article 6(1)(b) and (c) of the Directive, the Commission submits that Ireland has failed to fulfil its obligations under those provisions. It adds that, since Ireland's initial monitoring programme was defective, any repetition of that programme would also be defective.

69 In that regard, suffice it to note that Ireland accepts that it has not fulfilled its obligations under that provision within the period prescribed in Article 6 of the Directive.

70 It follows that the fourth and last head of claim of the Commission is well founded.

71 In the light of all the foregoing considerations, it must be held that:

by failing, within the time-limits provided for in the Directive,

— to identify completely waters affected by pollution and waters which could be affected by pollution pursuant to Article 3(1) in accordance with the criteria set out in Annex I to the Directive,

— to designate vulnerable zones pursuant to Article 3(2) and/or Article 3(4) thereof,

— to establish action programmes in accordance with Article 5 of the Directive, and

— to carry out correctly and completely monitoring and review of waters in accordance with Article 6(1)(a), (b) and (c) of the Directive,

Ireland has failed to fulfil its obligations thereunder.

Costs

72 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 Ireland to be ordered to pay the costs and the latter has been unsuccessful, it must be ordered to pay the costs.

On those grounds,

THE COURT (Fifth Chamber),

hereby:

1. declares that by failing, within the time-limits provided for in Council Directive 91/676/EEC of 12 December 1991 concerning the protection of waters against pollution caused by nitrates from agricultural sources,

   — to identify completely waters pursuant to Article 3(1) in accordance with the criteria set out in Annex I,

— to designate vulnerable zones pursuant to Article 3(2) and/or Article 3(4) thereof,

— to establish action programmes in accordance with Article 5 of the Directive, and

— to carry out correctly and completely monitoring and review of waters in accordance with Article 6(1)(a), (b) and (c) of the Directive,

Ireland has failed to fulfil its obligations thereunder.

2. Orders Ireland to bear the costs.

Jann Timmermans von Bahr

Delivered in open court in Luxembourg on 11 March 2004.

R. Grass V. Skouris

Registrar President