OPINION OF ADVOCATE GENERAL MISCHO

delivered on 10 June 1999 *

1. The Commission has brought proceedings before the Court, pursuant to Article 169 of the EC Treaty (now Article 226 EC), regarding the methods used by the Federal Republic of Germany to fulfil its obligation to implement Council Directive 76/464/EEC of 4 May 1976 on pollution caused by certain dangerous substances discharged into the aquatic environment of the Community [1] (hereinafter 'the Directive').

2. The Commission's complaint relates in particular to the German Government's failure to establish programmes, in accordance with Article 7 of the Directive, with quality objectives designed to reduce pollution by the substances in List II of the Annex to the Directive. This action is one of a series of actions for failure to fulfil obligations, brought by the Commission against several other Member States, which have up to the present time resulted in five judgments by the Court. [2]

General framework of the Directive

3. In its first recital, the Directive, which was adopted on the basis of Articles 100 of the EC Treaty (now Article 94 EC) and Article 235 of the EC Treaty (now Article 308 EC), states that:

'there is an urgent need for general and simultaneous action by the Member States to protect the aquatic environment of the Community from pollution, particularly that caused by certain persistent, toxic and bioaccumulable substances.'

4. Article 2 of the Directive provides:

'Member States shall take the appropriate steps to eliminate pollution of the waters referred to in Article 1 by the dangerous substances in the families and groups of substances in List 1 of the Annex and to reduce pollution of the said waters by the dangerous substances in the families and

* Original language: French.

1 — OJ 1976 L 129, p. 23.

2 — See judgments in Case C-206/96 *Commission* v *Luxembourg* [1998] ECR I-3401; Joined Cases C-232/95 and C-233/95 *Commission* v *Greece* [1998] ECR I-3343; Case C-285/96 *Commission* v *Italy* [1998] ECR I-5935; Case C-214/96 *Commission* v *Spain* [1998] ECR I-7661, and Case C-207/97 *Commission* v *Belgium* [1999] ECR I-275.

groups of substances in List II of the Annex, in accordance with this Directive, the provisions of which represent only a first step towards this goal.'

5. List I includes certain individual substances which belong to families and groups of substances as listed, selected mainly on the basis of their toxicity, persistence and bioaccumulation. Under Article 6 of the Directive, the Council must lay down the limit values which the emission standards must not exceed and the quality objectives for the substances within List I.

6. According to the Annex to the Directive, List II includes:

'— substances belonging to the families and groups of substances in List I for which the limit values referred to in Article 6 of the Directive have not been determined,

— certain individual substances and categories of substances belonging to the families and groups of substances listed below,

and which have a deleterious effect on the aquatic environment, which can, however, be confined to a given area and which depend on the characteristics and location of the water into which they are discharged.'

7. Article 7 of the Directive states:

'1. In order to reduce pollution of the waters referred to in Article 1 by the substances within List II, Member States shall establish programmes in the implementation of which they shall apply in particular the methods referred to in paragraphs 2 and 3.

2. All discharges into the waters referred to in Article 1 which are liable to contain any of the substances within List II shall require prior authorisation by the competent authority in the Member State concerned, in which emission standards shall be laid down. Such standards shall be based on the quality objectives, which shall be fixed as provided for in paragraph 3.

3. The programmes referred to in paragraph 1 shall include quality objectives for water; these shall be laid down in accordance with Council Directives, where they exist.

4. The programmes may also include specific provisions governing the composition

and use of substances or groups of substances and products and shall take into account the latest economically feasible technical developments.

5. The programmes shall set deadlines for their implementation.

6. Summaries of the programmes and the results of their implementation shall be communicated to the Commission.

7. The Commission, together with the Member States, shall arrange for regular comparisons of the programmes in order to ensure sufficient coordination in their implementation. If it sees fit, it shall submit relevant proposals to the Council to this end.'

8. Article 10 provides: 'Where appropriate, one or more Member States may individually or jointly take more stringent measures than those provided for under this Directive.'

9. Article 12 provides as follows:

'1. The Council, acting unanimously, shall take a decision within nine months on any Commission proposal made pursuant to Article 6 ...

2. The Commission shall, where possible within 27 months following notification of this Directive, forward the first proposals made pursuant to Article 7(7). The Council, acting unanimously, shall take a decision within nine months.'

10. Lastly, Article 13 provides that, for the purposes of the Directive, Member States are to supply the Commission, at its request, with additional information *inter alia* on the programmes referred to in Article 7.

11. The Directive, which entered into force on the date of notification, 5 May 1976, does not lay down a specific time-limit for

practical implementation of the obligations it sets out.

12. Since List I essentially contains, with the exception of mercury and cadmium, families and groups of substances, the Commission has always considered it necessary to define the relevant individual substances within these groups and families of substances before setting out emission standards and quality objectives.

13. Work undertaken for this purpose by the Commission in cooperation with the Member States resulted in a list of 129 substances being drawn up and annexed to the Communication from the Commission to the Council of 22 June 1982 on dangerous substances which might be included in List I of Council Directive 76/464/EEC. [3]

14. In its Resolution of 7 February 1983 concerning the combating of water pollution, [4] the Council states that the list of 129 substances contained in the Commission communication will serve the Community as a basis for further work on the implementation of the Directive.

15. After that Resolution three other substances were added to the list in question, which then contained 132 substances. Of these substances, 18 are covered by Council directives which contain the emission standards and quality objectives, and 15 others were the subject of the proposal for a Council directive amending Directive 76/464, introduced by the Commission on 14 February 1990. [5]

16. It is intended to include the 99 remaining substances in List I of the Annex to the Directive, but until the Council establishes maximum limits for emissions of these substances, they are to be considered as substances contained in List II. [6]

17. The Commission's claim is confined, moreover, to the absence of programmes to reduce pollution caused by these 99 substances and therefore does not concern the other substances which appear in List II.

Admissibility of the action

18. In its defence, the Federal Republic of Germany raised a plea of inadmissibility, as it had already done in a number of other actions for failure to fulfil its obligations,

3 — OJ 1982 C 176, p. 3.
4 — OJ 1983 C 46, p. 17.
5 — OJ 1990 C 55, p. 7.
6 — See Annex to the Directive.

on the basis that both the reasoned opinion and the decision to bring proceedings before the Court were adopted by the Commission in breach of the principle of collegiate responsibility.

19. However, in its judgment of 29 September 1998,[7] the Court dismissed the same plea of inadmissibility as unfounded.

20. The Federal Republic of Germany therefore withdrew the plea of inadmissibility at the hearing.

Substance of the case

21. In its application, the Commission observes that, in accordance with Article 7(1) and in conjunction with Article 1 of the Directive, Member States are required to establish programmes including quality objectives to reduce water pollution within a set period of time. All discharges into the waters in question require prior authorisation by the competent authority, which is required to set emission standards on the basis of quality objectives laid down in the programmes.

22. The Commission maintains that measures such as cumulative standards or regulations concerning individual substances, which the German Government described in the pre-litigation procedure, do not constitute programmes within the meaning of Article 7 of the Directive. Furthermore, the existence of general programmes for cleaning up waters such as those relied on by the German Government cannot be considered sufficient to transpose the provision at issue. The objective of these programmes to reduce general pollution of waters does not necessarily fulfil the specific objective of the Directive, which is to reduce water pollution caused by 99 listed substances, categorised as being particularly dangerous.

23. The Commission adds that even if the fact put forward by the German Government is taken as proven, namely that before reunification there was no water pollution in Germany, even applying the strictest criteria, this fact would not release the German Government from the obligation to establish specific programmes in accordance with Article 7 of the Directive.

24. The German Government notes firstly that, under the third paragraph of Arti-

7 — Case C-191/95 *Commission* v *Germany* [1998] ECR I-5449, paragraph 51.

cle 189 of the EC Treaty (now Article 249 EC), a directive is binding, as to the result to be achieved, upon each Member State to which it is addressed, but leaves to the national authorities the choice of form and methods. It claims that the combined effect of various national measures ('laws in the strict sense, secondary legislation and planning instruments') which it has adopted guarantee fulfilment of the Directive's objective: that is, effective protection of the aquatic environment of the Community against dangerous substances.

25. It then puts forward three pleas to challenge the validity of the Commission's case.

First plea in law

26. The German Government relies on the option provided by Article 10 of the Directive for Member States to take more stringent measures than those provided for in the Directive. It points out in that connection that the aim of the Directive itself is the *elimination* of pollution of the aquatic environment by substances in List I, considered particularly dangerous, by means of limit values for emissions laid down by the Council, while for less dangerous substances contained in List II its aim is the *reduction* of pollution which these substances cause by means of the programmes referred to in Article 7. In other words, the Directive assumes that laying down limit values for emissions constitutes a more stringent measure than the programmes.

27. Consequently, the Federal Republic of Germany itself established on the basis of Article 7a of the *Wasserhaushaltsgesetz* (Law on water use, hereinafter the 'WHG') general emission limit values, without distinguishing between substances in List I and those in List II. Discharge of waste water into the aquatic environment is subject to authorisation from the administrative authorities. Such authorisation is only granted if the content in polluting agents of substances in Lists I and II and other agents is maintained low enough to comply with the relevant procedure in each case, within the limits of current technology. These standards are set by regulation. The annexes to the regulation determine the limit values uniformly applicable to discharge into the aquatic environment of the polluting agents under discussion. In accordance with the precautionary principle, any discharge should, broadly speaking, thus be avoided.

28. Under German law, then, all discharges into the aquatic environment are subject to strict requirements on limit values for emissions as provided for by the Directive for substances contained in List I. Furthermore, according to the German Government, compliance with the limit values for emissions is sufficient to satisfy the requirements of the Directive without having to prove, in each case, compliance with environmental quality objectives. In any case, the WHG takes into account pollution of

the environment into which the waters are discharged (*Immission*) insofar as Article 6 of the WHG states that authorisation for the discharge is to be 'refused where the intended action may harm the general good (*Wohl der Allgemeinheit*) and, in particular, where it may put the public water supply at risk ...'.

29. It is the opinion of the German Government that data on the environment in Germany corroborate the view that this system constitutes a more stringent protection measure than the programmes provided for in Article 7 of the Directive. To bear this out, as regards 35 of the 99 substances mentioned above, a comparison of data on the quality of the water with quality objectives set out by a group of experts from the Commission shows that these quality objectives were observed at all testing points subject to monitoring for all substances measured in 1995. As regards 37 other substances of the 99, monitoring of the extent of their concentration in the aquatic environment shows that draft quality objectives proposed by a German committee of experts are also met. For the remaining 27 substances, data are not available for objective reasons, either because particular pesticides are banned there, or because it is not yet possible to carry out analytical controls on quality objectives for technical mixtures.

30. The Federal Republic of Germany concludes that 'setting limit values for emissions constitutes a more stringent measure than establishing programmes and quality objectives.' It therefore considers that Article 7 is not applicable.

31. It is the Commission's opinion that Member States may only rely on Article 10 of the Directive where more stringent national measures are accompanied by compliance with all the compulsory provisions of the Directive. In any case, it would not be right to accept that setting limit values for emissions constitutes a more stringent measure than establishing programmes in accordance with Article 7 of the Directive. Article 7(3) of the Directive makes it clear that the programmes must include quality objectives to be set for certain categories of water according to the quality of water to be obtained.

Analysis

32. It should be borne in mind, firstly, that these proceedings concern exclusively 99 substances within List I. The Directive makes provision for the Council, acting

on a proposal from the Commission, to lay down 'limit values which the emission standards must not exceed' for these substances.

33. As the Council has not yet laid down these values, the Federal Republic of Germany is enforcing limit values which it has set independently.

34. The dispute arises from the fact that, under the Annex to the Directive, List II includes 'substances belonging to the families and groups of substances in List I for which the limit values referred to in Article 6 of the Directive have not been determined.' In other words, these substances should for the time being be treated as substances in List II.

35. For those substances, Article 7 provides that Member States are to establish programmes in the implementation of which they should apply the following methods:

— prior authorisation;

— emission standards;

— quality objectives for water.

36. The Federal Republic of Germany has a system requiring prior authorisation as well as emission standards, which consist of limit values. It has, however, established neither programmes nor quality objectives.

37. In its first plea, Germany claims that it is not obliged to do so since, as it sets limit values, it has taken 'more stringent measures' within the meaning of Article 10 of the Directive (the text of which appears in point 7 above).

38. The Commission, is however, right to say that Article 10 does not permit Member States to distort the scheme of the Directive by failing to implement certain provisions on the pretext that they are applying more stringent measures in one respect (in this case, limit values).

39. The fact that Germany has set limit values for substances where the Council has not yet laid down such values cannot in itself be criticised. However, it does not relieve the Member State of the obligation to establish programmes which include fixing quality objectives for water. Until

the Council fulfils its duty under Article 6, Article 7 remains in force.

40. It should also be noted that, in its rejoinder, the Federal Republic of Germany claims that it uses 'a protection system corresponding to the system described in Article 6.' If that was the case, however, it would none the less be obliged to establish quality objectives. Paragraph 2 of this article requires the Council to lay down 'quality objectives for substances within List I.' If the Federal Republic of Germany is making up for the Council's inaction as regards setting limit values, it must also make up for its own inaction in setting quality objectives.

41. The importance given by the Community legislature to quality objectives is also evident in Article 6(3), where it is stated that '[t]he limit values established in accordance with paragraph 1 shall apply except in the cases where a Member State can prove to the Commission, in accordance with a monitoring procedure set up by the Council on a proposal from the Commission, that the quality objectives established in accordance with paragraph 2, or more severe Community quality objectives, are being met and continuously maintained throughout the area which might be affected by the discharges because of the action taken, among others, by that Member State.' This demonstrates just how important the Community legislature considers the quality objectives to be, as derogations may only be granted regarding compliance with the limit values, but not in connection with quality objectives.

42. The Commission also rightly states that programmes which include quality objectives must cover pollution by harmful substances emanating from diffuse sources. A discharge, therefore, caused by an act which is liable to be considered in breach and attributed to an offender constitutes a 'discharge' within the meaning of the Directive.

43. Furthermore, I cannot accept the other arguments advanced by the German Government to the effect that, in circumstances such as those in question, Article 7 is not applicable.

44. Firstly, it is undeniable that the scheme of the Directive is based on the view that the setting of emission limits by the Council should have as its aim the elimination of water pollution by the substances in List I.

45. It is not, however, correct to assume, as in the German Government's argument, that the process of laying down emission limit values results, *by its very nature*, in eliminating pollution. This elimination

depends entirely on the level at which the values are set.

46. Therefore, the German Government's argument that under the Directive itself, the *method* of setting emission limit values is considered to constitute on its own a more stringent instrument than the programmes mentioned in Article 7 must be dismissed as unfounded.

47. Secondly, the defendant government relies on the actual situation with regard to pollution in order to prove that the measures it has selected are more stringent; the German Government states that 'the very essence of Article 10 and other comparable provisions for increased protection means that it is impossible to ascertain whether the national measure constitutes a more stringent measure except by reference to the level of improvement to the environment actually achieved.'

48. On this point the Federal Republic of Germany merely states, however, that as a result of its own application of the system of limit values, the quality objectives proposed respectively by a group of experts from the Commission and a committee of German experts for 72 of the substances in question have already been met. [8]

8 — See point 28 above.

49. The terms used by the German Government here regarding the conclusion to be drawn from that observation are revealing. Observance of the relevant quality objectives, it states, proves that laying down emission limit values 'constitutes in reality a proper system of protection at least equivalent to a system based on the programmes' and therefore 'the existing legislation can be seen to be equally efficient if not more efficient'. In my opinion, however, compliance with these quality objectives cannot prove that the method selected by the German authorities is more stringent than the system of programmes provided for in the Directive; at most, it is an equally efficient method for reducing pollution.

50. The result which the German authorities claim to have achieved — reduced pollution — is no different from the result which they would have achieved by the programmes provided for in Article 7.

51. The same can be said of the charts of water quality in Germany which show, as the German Government points out, 'a constant improvement in the quality of running water over the last twenty years.'

52. The fact remains that a Member State is not permitted to rely on the fact that it has fulfilled the objectives of a Community

Directive to avoid the specific measures which the Directive required it to adopt.

53. Germany cannot therefore validly rely on Article 10 of the Directive to avoid establishing programmes which include quality objectives.

Second plea in law

54. In the second plea the German Government argues that the failure to implement attributed to it is 'the result of the Commission's own failure to act.' It questions 'the legitimacy of an action brought by the Commission against a Member State for inadequate transposition of Article 7... in connection with the 99 substances at issue. These substances are in fact included in List I and only come under the scope of Article 7 because the Commission has not fulfilled its obligation under Article 6 to lay down uniform limit values for these substances at Community level.'

55. There is, according to the German Government, 'a general principle of law, reflected in particular in Article 162 of the German Civil Code, that anyone who has, to his own advantage, prevented or caused a circumstance in breach of good faith may not rely thereon.'

Analysis

56. Here it is clear, as the Commission points out, that the Directive itself provides for measures to be taken by the Member States where the Council has not laid down limit values for substances contained in List I.

57. Even if this were not the case, however, under long-standing, settled case-law, [9] 'any wrongful act or default on the part of the Commission — which would have to be decided upon in an action especially brought on this point — would not in any way affect the proceedings for infringement of the Treaty.' The Court has also held [10] that 'the fact that the Council failed to carry out its obligations cannot relieve the defendants from carrying out theirs', since 'the basic concept of the Treaty requires

9 — See judgment in Joined Cases 2/62 and 3/62 *Commission* v *Luxembourg and Belgium* [1962] ECR 425, in particular p. 430.

10 — See judgment in Joined Cases 90/63 and 91/63 *Commission* v *Luxembourg and Belgium* [1964] ECR 625, in particular p. 631.

that Member States shall not take the law into their own hands.'

58. Consequently, a Member State cannot successfully rely on a failure to act on the part of a Community institution, whether the Commission or another, to attempt where it may to avoid a finding by the Court that that Member State has failed to fulfil its obligations.

Third plea in law

59. Lastly, the German Government claims that the German legislation on water does satisfy the requirements of Article 7 of the Directive.

60. It puts forward the following considerations:

61. With regard to the legal nature of the programmes referred to in Article 7 of the Directive it is for the Member States to choose the form and methods to be used.

62. As far as the content of the programmes is concerned, Article 7 unambiguously requires Member States to transpose the condition of authorisation stipulated in paragraph 2 into national law. The question whether, and to what extent Member States may decide not to lay down quality objectives referred to in paragraph 3 can be answered by means of an interpretation of Article 7 based on the principle of *effet utile* (the principle of effectiveness). In short, this means determining the most effective way of implementing Community law. Under Article 7 of the Directive, the programmes are intended to reduce water pollution. The concept of 'pollution' is defined in Article 1(2)(e) of the Directive as 'the discharge by man, directly or indirectly, of substances or energy into the aquatic environment ...'. Therefore, the defendant argues, it is necessary to lay down quality objectives to reduce pollution if, and only if, there is pollution within the meaning of the provision cited.

63. With regard to the binding nature of the programmes, the German Government points out that the emission standards laid down for discharge authorisations referred to in Article 7(1) are only meaningful if they are compulsory. The quality objectives referred to in Article 7(3) cannot, however, as such be binding since they simply represent the objective sought with regard to the environment and cannot themselves influence the behaviour of individuals. According to the German Government, 'quality objectives only take on a binding nature if the rules addressed to individuals

are to be assessed according to the extent to which the objectives are observed.'

64. A comparison of Article 7(3) with Article 6 of the Directive confirms that the former does not require the quality objectives to be binding in an absolute sense; they serve as a 'safety net', guaranteeing a minimum standard of protection of the environment. The question whether this minimum standard of protection should be achieved by defining quality objectives or by other means, principally by laying down uniform emission limit values, is a question which should be resolved on the basis of the principle of *effect utile*, that is, the maximum efficiency possible. As uniform emission limit values, even when determined nationally, already ensure a high quality environment, there is no need for compulsory quality objectives. In any case, for the substances in respect of which no pollution has been recorded, quality objectives are not required.

65. As regards the deadline for implementing the programmes mentioned in Article 7(5), the German Government observes that this does not apply to the quality objectives mentioned in Article 7(3).

66. The German Government maintains that the requirements mentioned have been satisfied by laws and regulations as well as by planning measures adopted at national level. It adds that the Law on water use, the WHG, constitutes a programme within the meaning of Article 7(1).

67. In accordance with Article 2 of the WHG, any use of water, including discharge, is subject to administrative authorisation which should set out emission standards; the criteria for granting it refer both to emissions and to pollution of the environment into which the water is discharged.

68. Under Article 6 of the WHG, objectives are defined for the whole of Germany; these objectives include a protection level higher than that required by the Community's quality objectives without, however, being mandatory. They apply to 64 substances deemed to be priority substances, which include 19 of the 99 substances in question.

69. In addition to the objectives set out for the whole of Germany, all authorisations must also comply with particular local or regional objectives. However, water management plans established by the German *Länder* do not systematically include objec-

tives for all substances but only for those which have been found to be polluting.

70. The German Government states that, in collaboration with adjacent States, it has adopted various cross-border programmes which include specific objectives for reducing water pollution. By way of example, it mentions, in this respect, action programmes for the Rhine, the Elbe, the Weser and the Danube, as well as measures taken within the framework of recommendations adopted at various international conferences on protection of the North Sea. In this context the International Commission for the Protection of the Rhine has adopted specific environmental quality objectives in the form of objectives regarding the concentration of substances.

71. In order to achieve a further reduction in water pollution, the Federal Republic of Germany claims to have also adopted a number of provisions on the composition and use of substances or groups of substances as well as on products, in accordance with Article 7(4) of the Directive. Thus laws on chemical and plant health products, as well as regulations on the protection of plants, include programmes with specific provisions for certain substances, including 10 of the 99 substances in question. These specific provisions also mean that emissions from diffuse sources can be reduced or avoided altogether.

Analysis

72. The legislative arsenal, in terms of acts and agreements, established by Germany is certainly impressive. However, it cannot be considered to properly implement the Directive, which requires specific programmes to be adopted, including quality objectives set for each watercourse.

73. The Court has held that: [11]

'... the programmes to be established under Article 7 of the Directive must be specific. Thus, the objective of reducing pollution pursued by general purification programmes does not necessarily correspond to the more specific objective of the Directive ...

What is specific to the programmes in question is the fact that they must embody a comprehensive and coherent approach, covering the entire national territory of each Member State and providing practical and coordinated arrangements for the

11 — See the judgments cited in footnote 2, in particular *Commission* v *Belgium* (paragraphs 39, 40 and 41).

reduction of pollution caused by any of the substances in List II which is relevant in the particular context of the Member State concerned, in accordance with the quality objectives fixed by those programmes for the waters affected. They differ, therefore, both from general purification programmes and from bundles of ad hoc measures designed to reduce water pollution.

It should be added that the quality objectives fixed by those programmes on the basis of analyses of the waters affected serve as the point of reference for calculating the emission standards specified in the prior authorisations. Moreover, those programmes must be communicated to the Commission in a form which facilitates comparative appraisal and their harmonised implementation in all the Member States.'

74. The German laws, regulations and agreements, as a whole, do not fulfil these criteria.

75. On the issue of determining 'the substances contained in List II which are relevant to the national context of each Member State', reference should be made to the judgment in *Commission* v *Luxembourg* [12], in which the Court referred to the failure on the part of the Grand Duchy of Luxembourg to fulfil its requirement to adopt programmes for reducing pollution in accordance with Article 7 of the Directive. The Court arrived at this conclusion on the basis of the simple fact that in Luxembourg there were indeed discharges into the aquatic environment of substances referred to in the Directive. The Court did not make the existence of the offence dependent on finding actual pollution of water by those substances.

76. There is no doubt that the programmes aim to reduce pollution, but Article 1(2)(e) of the Directive defines 'pollution' as 'the discharge by man, directly or indirectly, of substances or energy 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.' Any discharge of one of the 99 substances means that, sooner or later, the aquatic environment affected becomes polluted according to this definition. For this reason it is the mere existence of a discharge containing one of the 99 substances, rather than the existence of 'pollution' by the substance, as the German Government suggests, which makes it necessary for the substance to be included in a programme.

77. That view was later confirmed by the Court in the judgment in *Commission* v *Spain*, cited above, in which the Court

12 — Cited above, point 20 et seq.

found that the Kingdom of Spain had failed to fulfil its obligation to draw up programmes for *the substances contained in List II*. In the opinion of the Court, Spain's legislation was 'only a series of ad hoc legislative measures which cannot amount to an organised and coordinated system of quality objectives relating to *specific watercourses or bodies of water* and cannot, therefore, be considered to be a programme within the meaning of Article 7 of the Directive', while the Spanish Government maintained that monitoring had revealed the existence of only 30 of the 99 substances in Spanish continental waters.

78. I think it is beyond question that, in spite of the positive results it has achieved, the legislation on water in Germany cannot be said to 'amount to an organised and coordinated system of quality objectives relating to specific watercourses or bodies of standing water.'

79. The last plea of the German Government must therefore also be dismissed as unfounded.

Conclusion

80. Following this analysis, I propose that the Court should:

— declare that, by failing to establish, in accordance with Article 7 of Council Directive 76/464/EEC of 4 May 1976 on pollution caused by certain dangerous substances discharged into the aquatic environment of the Community, programmes for reducing pollution including quality objectives for the 99 substances contained in the first indent of List II in the Annex to the Directive, the Federal Republic of Germany has failed to fulfil its obligations under the EC Treaty;

— order the Federal Republic of Germany to pay the costs.