JUDGMENT OF THE COURT (Third Chamber)
8 March 2001 *

In Case C-266/00,

Commission of the European Communities, represented by M. Nolin, acting as Agent, with an address for service in Luxembourg,

applicant,

v

Grand Duchy of Luxembourg, represented by P. Steinmetz, acting as Agent,

defendant,

APPLICATION for a declaration that, by failing to adopt all the laws, regulations and administrative provisions necessary to comply with Article 5(4) and (6) and Article 10(1), in conjunction with Annex II A, Annex III 1, point 3, and Annex V 4(e) to 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 Grand Duchy of Luxembourg has failed to fulfil its obligations under that directive,

* Language of the case: French.

THE COURT (Third Chamber),

composed of: C. Gulmann, President of the Chamber, J.-P. Puissochet and F. Macken (Rapporteur), Judges,

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

having regard to the report of the Judge-Rapporteur,

after hearing the Opinion of the Advocate General at the sitting on 14 December 2000,

gives the following

Judgment

1 By application lodged at the Registry of the Court of Justice on 30 June 2000, the Commission of the European Communities brought an action under Article 226 EC for a declaration that, by failing to adopt all the laws, regulations and administrative provisions necessary to comply with Article 5(4) and (6) and Article 10(1), in conjunction with Annex II A, Annex III 1, point 3, and Annex V 4(e) to 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, hereinafter 'the Directive'), the Grand Duchy of Luxembourg has failed to fulfil its obligations under the Directive.

Legal background

Directive 91/676/EEC

2 Article 1 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 By virtue of Article 2(e) and (f) of the Directive, 'fertiliser' means both organic substances and chemical fertilisers.

4 Article 3(1) and (2) of the Directive provide:

'1. Waters affected by pollution and waters which could be affected by pollution if action pursuant to 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.'

5 It follows from Article 3(5) of the Directive that Member States may designate their entire national territory as a vulnerable zone and are then required to apply throughout that territory the action programmes referred to in Article 5 of the Directive.

6 With the aim of providing, for all waters, a general level of protection against pollution, Article 4 requires Member States to establish codes of good agricultural practice, to be implemented by farmers on a voluntary basis, and, where necessary, to set up a programme to promote the application of the codes. The codes of good agricultural practice drawn up under Article 4 must contain provisions covering at least the items mentioned in Annex II A to the Directive.

7 Article 5(1), (4) and (6) of the Directive provide:

'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.

...

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. 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.'

8 Annex II to the Directive concerns codes of good agricultural practice. According to section A of that Annex:

'A code or codes of good agricultural practice with the objective of reducing pollution by nitrates and taking account of conditions in the different regions of the Community should contain provisions covering the following items, in so far as they are relevant:

1) periods when the land application of fertiliser is inappropriate;

2) the land application of fertiliser to steeply sloping ground;

3) the land application of fertiliser to water-saturated, flooded, frozen or snow-covered ground;

4) the conditions for land application of fertiliser near water courses;

5) the capacity and construction of storage vessels for livestock manures, including measures to prevent water pollution by run-off and seepage into the groundwater and surface water of liquids containing livestock manures and effluents from stored plant materials such as silage;

6) procedures for the land application, including rate and uniformity of spreading of both chemical fertiliser and livestock manure, that will maintain nutrient losses to water at an acceptable level.'

9 Annex III to the Directive concerns measures to be included in action programmes pursuant to Article 5(4)(a) of the Directive. According to Annex III 1, point 3:

'1) The measures shall include rules relating to:

...

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.'

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 Pursuant to Annex V 4(e) to the Directive, the information to be contained in the reports referred to in Article 10 are to include:

'a summary of the action programmes drawn up pursuant to Article 5 and, in particular:

...

(e) the assumptions made by the Member States about the likely time scale within which the waters identified in accordance with Article 3(1) are expected to respond to the measures 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, the Member States are to bring into force the laws, regulations and administrative provisions necessary to comply with the Directive within two years of its notification.

13 A footnote to Article 12(1) indicates that the Directive was notified to the Member States on 19 December 1991.

The national legislation

14 The Directive was transposed into Luxembourg law by the Grand-Ducal Regulation of 20 September 1994 concerning the use of organic fertilisers in agriculture and amending the Grand-Ducal Regulation of 14 April 1990, as amended, relating to sewage sludge (*Mémorial* A 1994, p. 1648, hereinafter 'the Grand-Ducal Regulation').

15 The documents before the Court show that the Grand Duchy of Luxembourg chose the option provided for in Article 3(5) of the Directive and designated its entire territory as a vulnerable zone.

Pre-litigation procedure

16 By letter of 10 April 1997, the Commission requested information from the Grand Duchy of Luxembourg in regard to certain aspects of the implementation of the Directive. The Grand Duchy of Luxembourg replied to that request in a letter of 20 November 1997.

17 The Commission considered that the Directive had not been transposed fully into Luxembourg law and, by letter of 21 November 1997, it gave the Grand Duchy of Luxembourg formal notice to submit its observations in that regard within a period of two months. The Grand Duchy of Luxembourg replied on 17 June 1998.

18 Since it was not satisfied by that reply, the Commission, on 21 October 1998, sent a reasoned opinion, to which the Luxembourg Government replied by letter of 23 December 1998. Following that reply, and in order to clarify the scope of

the complaints it was making, the Commission sent a supplementary reasoned opinion on 26 January 2000 and gave the Luxembourg Government a period of one month within which to adopt the necessary measures of compliance.

19 The Luxembourg Government replied by letters of 3 April and 8 June 2000. It informed the Commission that a preliminary draft of a Grand-Ducal Regulation, with a view to complying with the Directive, was before the Conseil de Gouvernement for approval.

20 It was in those circumstances that the Commission brought the present action.

Arguments of the parties

21 The Commission makes five complaints against the Grand Duchy of Luxembourg.

22 The Commission's first complaint is that the Grand-Ducal Regulation concerns solely the use of organic fertilisers in agriculture and that no provision has therefore been adopted for chemical fertilisers in order to comply with all the obligations laid down in Annex III 1, point 3, and Annex II A, to the Directive. The Commission complains in particular that in those circumstances the Luxembourg legislation does not satisfy either the obligation to adopt measures in order to achieve a balance between the various forms of addition of nitrogen, provided for in particular in Annex III 1, point 3, to the Directive, or the obligation to adopt measures in order to lay down rules for the conditions, in particular the distance, to be observed when applying chemical fertilisers near water courses, as provided for in Article 5(4), in conjunction with Annex II A, point 4, of the Directive.

23 Second, the Commission complains that, although Article 5(4), in conjunction with Annex II A, point 2, and Annex III 1, point 3(a), to the Directive, provides for rules to be adopted relating to the conditions for land application of fertiliser to steeply sloping ground, the Grand-Ducal Regulation covers those conditions only where the ground is water-saturated, flooded, snow-covered for more that 24 hours or frozen.

24 Third, the Commission complains that, by failing to lay down rules in respect of the conditions for the land application of organic fertiliser on ground that has been snow-covered for less than 24 hours, the Grand-Ducal Regulation must be regarded as contrary to Article 5(4), in conjunction with Annex II A, point 3, to the Directive.

25 Fourth, the Commission alleges that, by failing to implement suitable monitoring programmes within the meaning of Article 5(6) of the Directive, the Luxembourg authorities have not complied with the obligation laid down in that provision.

26 Fifth and last, the Commission considers that the Luxembourg Government has not complied with Article 10(1), read in conjunction with Annex V 4(e), to the Directive, as the report submitted to the Commission pursuant to Article 10 of the Directive does not contain any estimate of the period within which it is expected that the waters identified in accordance with Article 3(1) of the Directive are expected to respond to the measures in the action programme.

27 In its defence submitted to the Court, the Luxembourg Government does not contest the complaints made against it. However, it states that a draft Grand-Ducal Regulation to transpose the Directive fully into Luxembourg law was adopted by the Conseil de Gouvernement on 16 June 2000 and then submitted to the Chambre d'Agriculture for its opinion on 30 June 2000.

Findings of the Court

28 In accordance with the third paragraph of Article 249 EC, a directive is binding, as to the results to be achieved, upon each Member State to which it is addressed. This obligation entails compliance with the time-limits set by directives (Case 10/76 *Commission* v *Italy* [1976] ECR 1359, paragraph 12).

29 As regards the Commission's first complaint, it must be stated, first, that the Grand-Ducal Regulation relates only to the use of organic fertiliser in agriculture. It does not therefore relate to chemical fertilisers, even though they are covered, by virtue of Article 2(f) of the Directive, by the obligations laid down in the Directive.

30 Next, none of the national regulations to which the Luxembourg Government referred during the pre-litigation procedure in order to show that it had complied with its obligations contains provisions which are sufficiently precise in order to meet the obligation in Annex III 1, point 3, to the Directive to establish a balance between, on the one hand, the foreseeable nitrogen requirements of crops and, on the other, the nitrogen supply to the crops, in particular by the addition of nitrogen compounds from chemical fertilisers.

31 Lastly, none of the Luxembourg regulations to which the Luxembourg Government referred during the pre-litigation procedure meets the obligation laid down in Article 5(4), in conjunction with Annex II A, point 4, to the Directive relating to the conditions, such as the distance, to be observed when applying chemical fertiliser close to water courses, with a sufficient degree of precision to ensure that, in the particular context of the application of such fertiliser, water courses will not be polluted.

32 It follows from the foregoing that the Commission's first complaint is well founded.

33 As regards the Commission's second complaint, it suffices to state that, by failing to lay down rules regarding the conditions for the land application of fertiliser to steeply sloping ground, irrespective of climatic conditions, the Grand Duchy of Luxembourg has failed to comply with the requirements of Article 5(4), in conjunction with Annex II A, point 2, and Annex III 1, point 3(a), to the Directive.

34 As to the Commission's third complaint, it should be pointed out that Article 5(4), in conjunction with Annex II A, point 3, to the Directive, requires measures aiming to limit land application of fertiliser to snow-covered ground. Since there is no reason to believe that the likely risks of pollution where fertiliser is applied on snow-covered ground are lower when snow has been lying for less than 24 hours, the Grand-Ducal Regulation must be regarded as having failed to fulfil the obligations laid down in those provisions of the Directive.

35 As regards the Commission's fourth complaint, it is clear from the documents in the case that the information sent by the Luxembourg Government does not prove that the Grand-Duchy of Luxembourg has a monitoring system which covers all the surface and subterranean waters exposed to intensive agricultural pressure and which allows the spread of pollution and the impact of the action programmes to be assessed. Moreover, the information provided does not show that the eutrophic state of Luxembourg waters is monitored. Furthermore, no evidence to show the existence of a monitoring programme was sent to the Commission by the date fixed in the supplementary reasoned opinion. Finally, the competent authorities did not, by that same date, finalise a model for assessing the effectiveness of the action programmes, so that they are unable to comply with the assessment obligation laid down in Article 5(6) of the Directive.

36 In those circumstances, the Commission's fourth complaint is well founded.

37 Finally, as regards the Commission's fifth complaint, it is clear from the documents before the Court that at the end of the period fixed by the supplementary reasoned opinion the Grand Duchy of Luxembourg merely informed the Commission that a study had been commissioned in order to evaluate the effectiveness of the provisions provided for under the Directive and that this study had not yet been submitted to the Commission. It follows that this complaint, based on failure to comply with Article 10(1), in conjunction with Annex V 4(e), to the Directive, is well founded.

38 It must therefore be held that, by failing to adopt all the laws, regulations and administrative provisions necessary to comply with the obligations laid down in Article 5(4) and (6), and Article 10(1), in conjunction with Annex II A, Annex III 1, point 3, and Annex V 4(e), to the Directive, the Grand Duchy of Luxembourg has failed to fulfil its obligations under the Directive.

Costs

39 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 Grand Duchy of Luxembourg has been unsuccessful, the latter must be ordered to pay the costs.

On those grounds,

THE COURT (Third Chamber)

hereby:

1. Declares that, by failing to adopt all the laws, regulations and administrative provisions necessary in order to comply with the obligations laid down in Article 5(4) and (6), and Article 10(1), in conjunction with Annex II A, Annex III 1, point 3, and Annex V 4(e), to Council Directive 91/676/EEC of 12 December 1991 concerning the protection of waters against pollution caused by nitrates from agricultural sources, the Grand Duchy of Luxembourg has failed to fulfil its obligations under that directive;

2. Orders the Grand Duchy of Luxembourg to pay the costs.

Gulmann Puissochet Macken

Delivered in open court in Luxembourg on 8 March 2001.

R. Grass

Registrar

C. Gulmann

President of the Third Chamber