OPINION OF ADVOCATE GENERAL LÉGER

delivered on 13 July 2000 *

1. By the present action, brought under Article 169 of the Treaty (now Article 226 EC), the Commission of the European Communities asks the Court for a declaration that, by failing to adopt all the measures necessary to comply with its obligations under Article 3(1) and (2) and Article 5 of Council Directive 91/676/EEC, [1] the United Kingdom of Great Britain and Northern Ireland has failed to fulfil its obligations under that directive. The Commission also seeks an order of costs against the United Kingdom.

I — Legal context

2. The Directive has the objective of reducing water pollution caused or induced by nitrates from agricultural sources and preventing further such pollution. [2] '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'. [3]

3. The Directive imposes three types of obligations on the Member States. First, in accordance with Article 3(1) and the criteria specified in Annex I, the Member States are to identify waters affected by pollution or which could be affected by pollution if action pursuant to Article 5 is not taken. Second, by virtue of Article 3(2), they are required to designate 'as vulnerable zones all known areas of land in their territories which drain into the waters identified according to [Article 3(1)] and which contribute to pollution'. Third, Article 5 requires them to establish 'action programmes in respect of designated vulnerable zones' intended, in accordance with the objective set out in Article 1, to avoid

* Original language: French.

1 — Council Directive 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').

2 — Article 1.

3 — Article 2(j).

or solve problems of water pollution which is caused by nitrates from agricultural sources.

4. The designation of vulnerable zones must be carried out within two years from notification of the Directive [4] and notified to the Commission within six months. The action programmes for meeting the objectives of the Directive, as set out in Article 1, must be established within two years from the designation referred to in Article 3(2). [5]

5. The Member States are also required to revise the list of vulnerable zones originally designated in order to take account of changes and factors unforeseen at the time of the initial designation. [6] Similarly, they are to revise the action programmes initially established by them. [7]

6. In addition, with the aim of providing for all waters a general level of protection against pollution, in accordance with Article 4, the Member States are required to establish within two years from notification of the Directive codes of good agricultural practice, which are to be implemented by farmers on a voluntary basis, and where necessary to set up programmes, including the provision of training and information for farmers, promoting the application of those codes.

7. Finally, Article 10(1) of the Directive provides that, within four years following notification of the Directive, the Member States are to report to the Commission on the preventive action taken to avoid pollution of waters, draw up a map showing the waters identified and the location of the designated vulnerable zones, and provide a summary of the monitoring results for those zones and of the action programmes drawn up pursuant to Article 5.

8. The Directive was notified to the Member States on 19 December 1991. [8]

II — Pre-litigation procedure

9. After receiving notification from the United Kingdom of the measures adopted

4 — Article 3(2).
5 — Article 5(1).
6 — Article 3(4).
7 — Article 5(7).

8 — Article 12(1).

pursuant to the Directive, the Commission sent it a letter of formal notice on 17 October 1997 in order to obtain further information.

10. Following an exchange of correspondence concerning the measures adopted by the United Kingdom, the Commission, dissatisfied with the answers provided, issued a reasoned opinion on 9 June 1998 in which it contended that the United Kingdom had infringed Article 3(1) and (2) and Article 5 of the Directive and called on the United Kingdom to comply with the opinion within two months.

11. In its response by letters of 14 October, 23 November and 7 December 1998 and 11 January 1999, the United Kingdom conceded that the complaints set out by the Commission were well founded and undertook to render its national legislation consistent with the Directive.

III — Positions of the parties

12. On 26 February 1999 the Commission filed with the Court the present application in which it states that United Kingdom law does not comply with the Directive on the following three points:

1. *Failure to comply with the obligations flowing from Article 3(1) of the Directive*

13. The Commission notes that, under Article 3(1), the Member States are required to identify, in accordance with the criteria set out in Annex I, waters affected by pollution and waters which could be affected by pollution if action pursuant to Article 5 is not taken. According to those criteria, surface freshwaters, in particular those used or intended for the abstraction of drinking water, which contain or could contain, if action pursuant to Article 5 is not taken, more than the concentration of nitrates laid down in accordance with Directive 75/440/EEC [9] are to be identified as waters affected by pollution. [10] The same holds for groundwaters which have a nitrate content in excess of 50 milligrams per litre or could have such a nitrate content if action pursuant to Article 5 is not taken, [11] and

9 — That is to say 50 milligrams per litre. See the provisions 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), as amended by Council Directive 79/869/EEC of 9 October 1979 concerning the methods of measurement and frequencies of sampling and analysis of surface water intended for the abstraction of drinking water in the Member States (OJ 1979 L 271, p. 44), and the judgment in Case C-293/97 *R* v *Secretary of State for the Environment and MAFF, ex parte Standley and Others* [1999] ECR I-2603.

10 — Paragraph A.1 of Annex I.

11 — Paragraph A.2 of Annex I.

for natural freshwater lakes, other freshwater bodies, estuaries, coastal waters and marine waters which are found to be eutrophic [12] or may become eutrophic in the near future if action pursuant to Article 5 is not taken. [13]

14. However, it is apparent from the report of the United Kingdom Government sent to the Commission pursuant to Article 10 of the Directive that only waters intended for the abstraction of drinking water were included among the surface freshwaters affected by pollution which the United Kingdom identified. On the other hand, surface freshwaters which are not intended or used for the abstraction of drinking water and contain or could contain excessive nitrate concentrations were not identified.

15. The Commission also points out that, according to the report, only groundwater sources intended for human consumption were accepted as capable of being classified as waters affected by pollution within the meaning of Article 3(1) of the Directive. That approach is contrary to both the letter and the spirit of paragraph A.2 of Annex I to the Directive. It is clear from the provisions referred to above that identification of waters affected by pollution is to take account of all groundwaters and not only those intended for human consumption.

16. Accordingly, the Commission concludes that the United Kingdom Government's definition of surface waters as referred to in Article 3(1) of the Directive does not satisfy the conditions and criteria prescribed both by that article and by Annex I.

2. *Failure to comply with the obligations laid down in Article 3(2)*

17. The Commission notes that, as at 18 December 1997, the United Kingdom Government still had not drawn up a list of vulnerable zones in Northern Ireland, even though at least one area had been identified under Article 3(1) of the Directive as containing waters which were affected by pollution or could be so affected. It adds that although, as at 11 January 1999, three zones had been designated for Northern Ireland, the United Kingdom's incorrect definition of waters affected by pollution within the meaning of Article 3(1), as alleged under the first complaint, necessarily entails the risk that the designation of

12 — As provided in Article 2(i) of the Directive, 'eutrophication' means 'the enrichment of water by nitrogen compounds, causing an accelerated growth of algae and higher forms of plant life to produce an undesirable disturbance to the balance of organisms present in the water and to the quality of the water concerned'.

13 — Paragraph A.3 of Annex I.

vulnerable zones required by Article 3(2) will be incorrect.

3. *Failure to comply with the obligations laid down in Article 5*

18. The Commission states that, as at 31 January 1997, the United Kingdom still had not established action programmes for avoiding the problems of water pollution caused by nitrates from agricultural sources relating to the vulnerable zones designated under Article 3(2) of the Directive or for remedying those problems. That obligation should have been fulfilled by 20 December 1995 at the latest. The Commission notes that, although the United Kingdom has now complied with that requirement so far as concerns England, Scotland and Wales, that is not so in the case of Northern Ireland.

19. In its defence lodged on 28 May 1999, the United Kingdom Government explains that, following the exchange of correspondence with the Commission in the course of the pre-litigation procedure, it realised that the Commission's complaints were well founded. Accordingly, the Court must find to that effect. It states, however, that the restriction of the Directive's scope resulted from a misinterpretation of Article 3(2) and (3) and Article 5 of the Directive. It points out that it has already adopted certain measures in order to transpose the Directive into national law correctly. Furthermore, the Directive will soon be fully and faithfully transposed throughout national territory inasmuch as all the measures necessary for that purpose are in the course of being adopted.

20. The Commission waived its right to lodge a reply.

IV — Assessment

21. In accordance with the third paragraph of Article 189 of the EC Treaty (now the third paragraph of Article 249 EC), directives are binding, as to the results to be achieved, on each Member State. This obligation covers compliance with the time-limits set by directives. [14]

22. Also, the Court has consistently held that 'the question whether a Member State

14 — See, in particular, Case 10/76 *Commission* v *Italy* [1976] ECR 1359.

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 that the Court cannot take account of any subsequent changes'. [15]

23. In the present case, Article 3(1) and (2) of the Directive obliges the Member States to do the following by 20 December 1993 at the latest:

— identify as waters affected by pollution or as waters which could be affected by pollution if action pursuant to Article 5 of the Directive is not taken all surface freshwaters and groundwaters which have or could have a nitrate concentration in excess of 50 milligrams per litre, and not only waters intended for human consumption (Article 3(1));

— designate as vulnerable zones all known areas of land in their territories which drain into the waters identified in accordance with Article 3(1) and which contribute to pollution (Article 3(2)).

24. In addition, Article 5 of the Directive obliges the Member States to establish, by 20 December 1995 at the latest, action programmes for avoiding the problems of water pollution caused by nitrates from agricultural sources relating to the vulnerable zones designated under Article 3(2) of the Directive or for remedying those problems.

25. It is clear from the documents on the file that, on expiry of the time-limit set in the reasoned opinion, [16] the United Kingdom had not complied with those obligations — a fact which it moreover does not deny.

26. The Commission's application should therefore be granted.

V — Costs

27. Under Article 69 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, I consider that the United Kingdom should be ordered to pay the costs.

15 — Case C-316/96 *Commission* v *Italy* [1997] ECR I-7231, paragraph 14, and Case C-364/97 *Commission* v *Ireland* [1998] ECR I-6593, paragraph 8.

16 — That is to say 10 August 1998 at the latest.

Conclusion

28. In the light of the foregoing considerations, I propose that the Court should:

(1) declare that, by failing to adopt the laws, regulations and administrative provisions necessary to comply with the obligations laid down in Article 3(1) and (2) and 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, the United Kingdom of Great Britain and Northern Ireland has failed to fulfil its obligations under that directive;

(2) order the United Kingdom of Great Britain and Northern Ireland to pay the costs.