JUDGMENT OF THE COURT (Sixth Chamber)

27 June 2002 *

In Case C-258/00,

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

applicant,

v

French Republic, represented initially by J.-F. Dobelle and D. Colas, and, subsequently, by G. de Bergues and D. Colas, acting as Agents, with an address for service in Luxembourg,

defendant,

* Language of the case: French.

supported by

Kingdom of Spain, represented by S. Ortiz Vaamonde, acting as Agent, with an address for service in Luxembourg,

intervener,

APPLICATION for a declaration that, by failing to take the appropriate steps to identify waters affected by pollution and, consequently, to designate the corresponding vulnerable zones, in accordance with Article 3 of and Annex I 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 French Republic has failed to fulfil its obligations under that directive,

THE COURT (Sixth Chamber),

composed of: F. Macken (Rapporteur), President of the Chamber, N. Colneric, C. Gulmann, R. Schintgen and J.N. Cunha Rodrigues, Judges,

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

having regard to the Report for the Hearing,

after hearing oral argument from the parties at the hearing on 4 October 2001, at which the Commission was represented by M. Nolin and the French Republic by D. Colas and by C. Chevalier, acting as Agent,

after hearing the Opinion of the Advocate General at the sitting on 29 November 2001,

gives the following

Judgment

1 By application lodged at the Court Registry on 28 June 2000, the Commission of the European Communities brought an action under Article 226 EC for a declaration that, by failing to take the appropriate steps to identify waters affected by pollution and, consequently, to designate the corresponding vulnerable zones, in accordance with Article 3 of and Annex I 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 French Republic has failed to fulfil its obligations under that directive.

2 By order of the President of the Court of 9 November 2000, the Kingdom of Spain was given leave to intervene in support of the form of order sought by the French Republic.

The legal framework

Community law

3 The purpose of the Directive, as set out in Article 1, is to reduce water pollution caused or induced by nitrates from agricultural sources and to prevent further such pollution.

4 Under 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'.

5 Article 3(1) and 3(2) of the Directive state:

'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.'

6 Under Article 5(1) of the Directive, '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.'

7 Annex I to the Directive, concerning the criteria for identifying the waters referred to in Article 3(1), states in its section 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 Directive 75/440/EEC;

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 eutrophic if action pursuant to Article 5 is not taken.'

National legislation

8 The French Environment Ministry's circular of 5 November 1992 concerning the Directive and the initial designation of vulnerable zones (hereinafter 'the circular of 5 November 1992') includes Annexes 3 and 4 entitled, respectively, 'Méthode de travail' (Working methods) and 'Connaissances actuelles sur l'eutrophisation et désignation des zones vulnérables' (Present understanding of eutrophication and the designation of vulnerable zones).

9 Annex 3 to the circular of 5 November 1992 states that 'the use of data relating to the eutrophication of coastal waters and of shallow, brackish lagoons should make it possible to complete that initial designation of zones.'

10 Annex 4 to the circular of 5 November 1992 contains an explanation of two key concepts in combating eutrophication, which are the 'facteur limitant' (limiting factor) and the 'facteur de maîtrise' (controlling factor):

'The control of [eutrophication] is a complex and difficult task. Any one of the causal factors listed above, either chemical or physical, can be the appropriate basis for effective action. Nevertheless, it has as a rule seemed relevant to concentrate the effort to control eutrophication on nutrients, and particularly on nitrogen (N) and phosphorus (P).

...

All nutrients are causal factors in the phenomenon. Considering their relative abundance in the environment, some can be present in ample quantities, others can sooner or later run short ... In that context, the *limiting factor* is defined as the element which first runs short, which first disappears from the environment as the result of its assimilation by plants.

...

For each species considered, the comparison of its appropriate N/P ratio and the N/P ratio of the environment should make it possible to assess whether the environment can provide it with nourishment and will reveal which of the two

elements will be the limiting factor. If the N/P ratio of the environment is greater than that which the tissues of that species can absorb, it means that nitrogen is superabundant and that a deficit in phosphorus will therefore appear first. Phosphorus is thus limiting. If the N/P ratio in the environment is lower than that of the tissues, it will conversely be nitrogen which will be the limiting factor in the development of the species.

...

The *controlling factor* will of course be a limiting factor, but that concept has an operational implication as well. Taking into account the possibility of monitoring the enrichment of the environment by one or another nutrient, the controlling factor will be that which *can be made to become limiting*.'

11 Annex 4 to the circular of 5 November 1992 goes on to point out that a nutrient constitutes a controlling factor only if human intervention can cause that nutrient to become limiting. It gives the example of certain cyanophyceae (blue algae) for which the limiting nutrient is nitrogen but whose proliferation cannot usefully be controlled by reducing inputs of anthropogenic nitrogen, since those algae are able, by rising to the surface of waters, to assimilate atmospheric nitrogen.

12 Annex 4 to the circular of 5 November 1992 concludes as follows:

'The present state of knowledge, still imprecise and incomplete owing to the complexity of the factors and phenomena in question, suggests that it is highly

likely that nitrogen is the controlling factor in the eutrophication of *saline waters* (coastal) and shallow *stagnant, brackish waters* (lagoons). It has been established that this is not the case for flowing brackish waters (estuaries) or hard freshwaters, both stagnant and flowing, where, to the contrary, it is phosphorus which plays that role. Finally, for acidic fresh waters, particularly stagnant (ponded), and for deep brackish waters, further studies are needed in order to reach a conclusion.

After observations and studies have made it possible to describe ... the state of eutrophication of waters, the working group will, on the basis of the considerations set out above, determine in which cases nitrogen is the controlling factor in the phenomenon. It will then also have to determine whether that nitrogen is in fact, at least predominantly, of agricultural origin. If such is the case, it will have to complete the designation of zones carried out on the basis of the nitrate content of waters. In the opposite case, there will be no reason to designate a particular vulnerable zone on the basis of that criterion.'

The pre-litigation procedure

13 Under Article 12(1) of the Directive, Member States were, by 20 December 1993, to identify polluted waters in their respective territories and to designate vulnerable zones in accordance with Article 3(1) and 3(2) of the Directive.

14 Since it considered that the designation of vulnerable zones was incomplete as regards France, by letter of 25 September 1998, the Commission gave the French Republic formal notice to submit its observations within two months.

15 The Commission complained in particular that the French Republic incorrectly implemented Articles 3 and 6 of and Annex I to the Directive, relating, first, to the identification of waters affected by pollution; second, to the designation of vulnerable zones; and, finally, to the monitoring of nitrate concentrations in waters.

16 Dissatisfied with the reply by the French authorities of 26 November 1998, the Commission, by letter of 9 July 1999, issued a reasoned opinion requesting the French Republic to take the measures necessary to comply within two months from its notification.

17 The French authorities responded to the reasoned opinion by letter of 16 September 1999, to which they attached the final results of the second round of monitoring of waters, which took place from September 1997 to August 1998.

18 In that letter, the French authorities maintained that the purpose of Annex 4 to the circular of 5 November 1992 was not to give Prefects the option of designating a zone on the basis of a eutrophication criterion, but to require them expressly to do so if it had been established that nitrates of agricultural origin were contributing to the state of eutrophication or were likely to provoke that phenomenon in the near future.

19 None the less, since it considered that the French Republic had not complied with the reasoned opinion within the time-limit allowed, the Commission brought the present action.

The action

20 In its application, the Commission made several complaints against the French Republic with respect to the incomplete identification of waters which are found to be or in the near future may become eutrophic as well as surface freshwaters and groundwaters which contain or could contain more than 50 mg/l nitrates and, consequently, with respect to an incomplete designation of vulnerable zones.

21 The Commission maintained, in particular, that by limiting the identification of eutrophic waters under the Directive to the case where nitrogen is predominantly of agricultural origin and to the assumption that nitrogen constitutes the controlling factor in the eutrophication, the circular of 5 November 1992 does not correctly apply the Directive, in particular its Article 3 and Annex I.

22 Moreover, the Commission contended that, by failing to identify the Seine bay as eutrophic and the waters at issue in the Département of the Oise as waters which contain or could contain a concentration of nitrates greater than 50 mg/l, the French Republic failed to apply correctly Article 3(1) of and Annex I to the Directive.

23 In its defence, the French Government stated that the circular of 5 November 1992 had been amended by a circular of 24 July 2000 in order to take account of the significant — and not predominant — nature of pollution by nitrates of agricultural origin. It also pointed out that the Département of the Oise had been designated as a vulnerable zone.

24 Accordingly, the Commission withdrew the complaints raised in its application regarding the limitation to pollution predominantly caused by nitrates of agricultural origin and the waters of the Département of the Oise.

Limiting the identification of eutrophic waters to cases where nitrogen is the controlling factor

Arguments of the parties

25 The Commission maintains that the methodology applied by the French Republic does not comply with the Directive, in particular Article 3 and Annex I, in that it limits the identification of eutrophic waters to zones in which nitrogen is the controlling factor in the eutrophication — that is, concretely, to coastal zones and shallow stagnant, brackish waters. Consequently, flowing brackish waters and hard freshwaters, both stagnant and flowing, could never be designated as eutrophic within the meaning of the Directive, given that, according to the circular, it is phosphorus and not nitrogen which is the controlling factor in those cases.

26 According to the Commission, nitrogen is a nutrient of prime importance in fostering eutrophication and must be controlled as a preventive measure, even if the supplementary presence of phosphorus has the effect of triggering the

phenomenon and determining its scope. It is thus essential, in order to control eutrophication, that waters be duly identified under Article 3 of and Annex I to the Directive and that action be taken to control the pollution caused by nitrates.

27 The Commission concludes that the French authorities have incorrectly and incompletely identified waters affected by pollution, so that they have carried out an incomplete designation of vulnerable zones.

28 For its part, the French Government maintains that the instructions contained in the circular of 5 November 1992 with respect to the consideration of criteria of eutrophication are in compliance with the Directive.

29 The French Government defines the controlling factor as the factor which is capable of being controlled, while the limiting factor is the factor which, when it disappears, is followed by a halt in the production of algae or higher forms of plant life.

30 The French Government denies, first, the Commission's claim that nitrogen is always a factor to be controlled, even in cases where eutrophication is triggered by another factor. According to the Government, a factor such as nitrogen can be limiting without being controllable. In that case, the Directive does not require the designation of a body of water as eutrophic.

31 It argues that, when the French authorities, relying on up-to-date scientific knowledge and techniques, assert that nitrogen is not always the controlling factor, they are referring to the fact that nitrogen is not necessarily a factor which

it is possible and effective to influence by changes in agricultural practices. Nitrogen may, in certain cases, originate in drainage basins, bottom sediments or the atmosphere, in which cases it is useless to attempt to control the quantity of nitrate. An effective policy for controlling an established case of eutrophication would have to resort to other methods in those cases.

32 Second, the French Government maintains that the method described in the circular of 5 November 1992 complies with Article 2(i) of the Directive, which sets out three cumulative conditions for determining whether a zone is eutrophic. Consequently, the mere enrichment in nitrate of a body of water cannot systematically lead to the conclusion that it is affected or likely to be affected by eutrophication.

33 Third, the French Government maintains that the Directive does not require all bodies of water which are eutrophic or may become eutrophic to be subject to its rules, but only those which are eutrophic or may become eutrophic if action pursuant to Article 5 is not taken. Member States must therefore select from among their eutrophic waters those whose quality can be improved by acting on the level of pollution by nitrates of agricultural origin.

34 Finally, it maintains that the Commission's position according to which nitrates must in all cases be considered, as a preventive measure, to be a sign of eutrophication within the meaning of the Directive negates the effectiveness of several provisions of that directive. The Directive requires identification as polluted waters only of eutrophic waters with respect to which the control of

nitrates is possible by measures applying to agriculture and would make optional the designation of the whole of the territory as a vulnerable zone. Reasoning such as that of the Commission would necessarily lead to the identification as polluted of all waters containing nitrates, even at a reasonable level — that is to say, in practice, all Community waters.

35 In its statement in intervention, the Spanish Government states that a programme to reduce discharges of nitrates of agricultural origin, such as that laid down by the Directive, cannot have any effect on the eutrophication of waters and, accordingly, is of no interest unless two conditions are met. First, the primary production of the aquatic ecosystems concerned should be limited by the availability of nitrogen. Second, it must be possible to reduce the amount of nitrogen by applying that programme.

36 It therefore considers that only waters where the production of phytoplankton is limited by nitrogen and where it is possible to limit the amount of nitrogen by acting on agricultural practices should be regarded as waters affected by pollution within the meaning of the Directive.

37 The Spanish Government also maintains that it has been proved scientifically that, in the majority of epicontinental aquatic ecosystems, the primary production of phytoplankton and, ultimately, eutrophication are not limited by the availability of nitrogen, but rather that of phosphorus.

38 The Commission contends that that statement is not supported by any scientific study. It cites various studies which it mentioned in its application and its reply to demonstrate that eutrophication is due to a combination of inputs of nitrogen and phosphorus and that the input of nitrogen in the phenomenon of marine eutrophication cannot, therefore, be deliberately ignored.

Findings of the Court

39 First, as set out in the sixth recital in the preamble to and Article 1 of the Directive, its objective is, in order to protect human health and living resources and aquatic ecosystems and to safeguard other legitimate uses of water, to reduce water pollution caused or induced by nitrates from agricultural sources and to prevent further such pollution.

40 Second, the ninth recital in the preamble states that special protection is required for certain zones draining into waters vulnerable to pollution from nitrogen compounds.

41 In addition, Articles 3(1) and 3(2) and 5 of the Directive, in conjunction with its Annex I(A)(1) and I(A)(2), require Member States to comply with the following obligations:

— to identify as waters affected by pollution or which could be affected by pollution if action pursuant to Article 5 is not taken not only waters intended for human consumption but also the entirety of:

(i) surface freshwaters which contain or could contain more than the concentration of nitrates laid down in 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; and

(ii) groundwaters which contain or could contain a concentration of nitrates greater than 50 mg/l;

— to designate as vulnerable zones, by 20 December 1993 at the latest, all known areas of land in their territories which drain into the waters thus identified as affected by pollution in compliance with Article 3(1) of the Directive, and

— to establish, by 20 December 1995 at the latest, action programmes to reduce the pollution of waters by nitrates and to improve their quality in the vulnerable zones designated under Article 3(2) of the Directive.

42 Finally, the waters affected by pollution or which could be so affected referred to in Article 3(1) of the Directive are defined according to, *inter alia*, the criteria listed in Annex I(A) to the Directive. One of those criteria refers to eutrophication that has been observed or could occur in the near future if action pursuant to Article 5 is not taken.

43 In the present case, the French Government infers from the definition of eutrophication set out in Article 2(i) of the Directive that the enrichment of surface waters by nitrate is not sufficient to render those waters eutrophic within the meaning of the Directive.

44 Moreover, it maintains that the circular of 5 November 1992 demonstrates that, for certain categories of waters, *inter alia* flowing brackish waters and hard freshwaters, both stagnant and flowing, eutrophication can never be controlled by reducing the quantities of nitrogen, since phosphorus should be considered the controlling factor in the eutrophication.

45 Without having to take account of the many scientific reports and studies cited in the present action, it should be noted that restricting the scope of the Directive to exclude certain categories of waters owing to the supposedly fundamental role of phosphorus in the pollution of those waters is incompatible with both the logic and the objective of the Directive.

46 First, the methodology applied by the French Republic results in large sections of surface freshwaters, flowing brackish estuaries and coastal waters never being able to be designated as eutrophic, even if nitrate pollution from agricultural sources or the risk of such pollution is a fact.

47 The circular of 5 November 1992 requests the competent authorities to take account of 'the considerations set out in Annex 4', which explains, as seen in paragraph 12 of the present judgment, that nitrogen is not the controlling factor

in the case of flowing brackish waters — that is, estuaries — and of hard freshwaters, both stagnant and flowing.

48 The possibility that major classes of waters would never be designated as eutrophic, even though there was in fact pollution by nitrates from agricultural sources or a real risk of such pollution, would clearly be incompatible with the Directive, which requires Member States to identify polluted waters or those which could be so affected in order to take certain measures to reduce water pollution caused or induced by nitrates from agricultural sources and to prevent further such pollution.

49 Admittedly, the circular of 5 November 1992 indicates that excessive growth of a plant species in an aquatic environment depends on multiple factors of a chemical, physical and environmental nature. According to that circular, 'at the stage where one can speak of *eutrophication* ..., that excessive growth of aquatic plant life thus appears to be the result of the complex and subtle interplay between a number of diverse and variable factors. To establish a relationship of cause and effect from its appearance, its nature, its intensity and its frequency is an extremely difficult task, precisely because of that complexity and subtlety of interactions.'

50 None the less, taking account of that complexity and of the fact that, as is clear from the circular of 5 November 1992, understanding of the subject is still imprecise and incomplete, it is incompatible with the logic and objective of the Directive to exclude a priori from its scope major classes of waters, such as those mentioned in that circular. Notwithstanding the role that phosphorus may play in eutrophication, plant species whose growth is accelerated by nitrogen may appear in such waters, giving rise to a disturbance of the balance between the different organisms which are present there.

51 Also, taking account of the fact that the obligations arising from Article 3(1) and 3(2) of the Directive are intrinsically linked, a restrictive identification of waters affected by pollution or which could be so affected under Article 3(1) would result in an incomplete designation of vulnerable zones under Article 3(2).

52 The method adopted by the French authorities to define waters affected by pollution or which could be so affected makes it possible for certain waters with high nitrogen levels to fall outside the scope of the Directive, so that the basins which drain into them are not designated as vulnerable zones under Article 3(2) of the Directive and are consequently not required to be covered by an action programme in accordance with Article 5.

53 Finally, while it is true that the Member States have been granted a wide discretion in the identification of waters referred to in Article 3(1) of the Directive, because of the complexity of the assessments which they are called upon to carry out in that context (see Case C-293/97 *The Queen* v *Minister of Agriculture, Fisheries and Food, ex parte Standley and Others* [1999] ECR I-2603, paragraphs 37 and 39), it nevertheless remains the case that when they carry out that identification, they are obliged to respect the objectives of the Directive, namely, the reduction of water pollution caused by nitrates from agricultural sources.

54 Thus, the exercise of that discretion may not result, as in the present case, in a large portion of nitrogen-bearing waters falling outside the scope of the Directive.

Failure to identify the waters of the Seine bay in the light of the Directive

Arguments of the parties

55 The Commission states that, by failing to identify the waters of the Seine bay as eutrophic within the meaning of the Directive, the French Republic has infringed Article 3(1) of and Annex I(A)(3) to the Directive.

56 The Commission cites, *inter alia*, the Schéma directeur d'aménagement et de gestion des eaux du bassin Seine-Normandie (Management Plan for the waters of the Seine-Normandy basin), according to which, first, the proliferation of toxic dinophysis phytoplankton appears to have accelerated over the past few years between Courseulles and Dieppe and, second, inputs of nutrients by the Seine and by watercourses appear to play a predominant role in the occurrence of the phenomenon.

57 In addition, a scientific paper of 1996 entitled 'Les apports en nitrate et phosphate en baie de Seine. Devenir de la pollution en mer' (Nitrate and phosphate inputs in the Seine bay. The growth of marine pollution) indicates that the increase of agricultural inputs probably contributes to increased nitrogen inputs to the Seine bay, accelerates primary production there and gives rise to eutrophication.

58 According to the Commission, the Seine bay contributes to the eutrophication of the eastern part of the North Sea, northern France and Norway.

59 The French Government maintains for its part that the waters of the Seine bay are not eutrophic within the meaning of the Directive.

60 Thus, according to the French Government, which refers to the definition of eutrophication set out in Article 2(i) of the Directive, it can hardly be denied that there is an 'enrichment ... by nitrogen compounds' of the Seine bay. That this is sufficiently serious to produce an 'accelerated growth of algae and higher forms of plant life' is somewhat more doubtful, but that it leads to a 'disturbance to the balance of organisms present in the water and to the quality of the water' has in no way been established by the Commission.

61 The French Government contends that neither the Seine bay nor the Lower Normandy coast experience the phenomena of macroalgae, brown tides or anoxia owing to an overabundance of phytoplankton. The Seine bay is characterised by strong tidal currents, which prevent the level of dissolved oxygen from dropping severely in the bottom waters of the bay, so that the natural balance of marine organisms is not disturbed. As to the temporary appearances of planktonic microalgae of the group dinophysis, these are not sufficiently serious to disturb the marine organisms and are due more to the vertical stratification of certain waters than to the growth of the amount of nitrogen in the water.

62 Hence, the French Government considers that the mere fact that nitrates are undeniably present in the Seine bay in sufficient quantity to nourish a hypothetical occurrence of eutrophication is not enough to contradict its conclusion that that zone is not eutrophic within the meaning of the Directive.

63 It also maintains that the failure to identify the Seine bay has not, in any event, had an impact on the following stage, that is, the designation of vulnerable zones, since almost all the zones feeding the Seine basin would have been designated as vulnerable on other grounds.

Findings of the Court

64 It should be noted at the outset that, in the written pleadings which it submitted to the Court, the French Government admits that there is, in the Seine bay, both enrichment by nitrogen compounds, which it does not deny are of agricultural origin, and accelerated growth of algae and of higher forms of plant life. In addition, it admits that it cannot be excluded that the persistence of certain phenomena which can be characterised as a disturbance to the balance of organisms present in the water or to the quality of the water makes it possible to consider that the Seine bay fulfils certain criteria for eutrophication.

65 It considers, none the less, in the light of the relevant objective and scientific criteria, that that zone need not be identified as eutrophic within the meaning of the Directive.

66 However, as is clear from paragraphs 45 to 54 of this judgment, the interpretation given to the concept of eutrophication by the French authorities and the method which they have adopted to identify the waters affected by pollution are too restrictive and, consequently, incompatible with the Directive.

67 In addition, even if the phenomenon of eutrophication is not evident in the Seine bay itself, it is none the less the case that that zone contributes to the eutrophication of the North Sea, which is, as the fourth recital to the Directive indicates, a zone requiring special protection.

68 As is evident from the reasoned opinion, the eutrophication of the eastern part of the North Sea, of northern France and of Norway has its origin in the discharge of nutrients, *inter alia* nitrogen, by all the basins draining into the North Sea and the eastern part of the English Channel. The Seine alone produces an annual flow of over 100 000 tonnes of nitrogen, two thirds of agricultural origin, in a total flow of 400 000 tonnes a year going from the Channel to the North Sea.

69 It is not in dispute in the present case that the nitrate levels of the water in the Seine bay are high and that, in the salt water of the North Sea, nitrogen is the most important limiting factor in the growth of algae and of higher forms of plant life.

70 In the light of the preceding considerations, it must be concluded that, by failing to take the appropriate steps to identify waters affected by pollution and, consequently, to designate the corresponding vulnerable zones, in accordance with Article 3 of and Annex I to the Directive, the French Republic has failed to fulfil its obligations under that directive.

Costs

71 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 French Republic has been unsuccessful, the French Republic must be ordered to pay the costs. In application of the first subparagraph of Article 69(4) of those rules, the Kingdom of Spain, which intervened in the proceedings, must bear its own costs.

On those grounds,

THE COURT (Sixth Chamber)

hereby:

1. **Declares that, by failing to take the appropriate steps to identify waters affected by pollution and, consequently, to designate the corresponding vulnerable zones, in accordance with Article 3 of and Annex I to Council Directive 91/676/EEC of 12 December 1991 concerning the protection of waters against pollution caused by nitrates from agricultural sources, the French Republic has failed to fulfil its obligations under that directive;**

2. **Orders the French Republic to pay the costs;**

3. **Orders the Kingdom of Spain to bear its own costs.**

Macken Colneric Gulmann

Schintgen Cunha Rodrigues

Delivered in open court in Luxembourg on 27 June 2002.

R. Grass

Registrar

F. Macken

President of the Sixth Chamber