JUDGMENT OF THE COURT (Third Chamber)

7 December 2000 *

In Case C-69/99,

Commission of the European Communities, represented by R. Wainwright, Principal Legal Adviser, acting as Agent, with an address for service in Luxembourg at the office of C. Gómez de la Cruz, of its Legal Service, Wagner Centre, Kirchberg,

applicant,

v

United Kingdom of Great Britain and Northern Ireland, represented by M. Ewing, of the Treasury Solicitor's Department, acting as Agent, and D. Wyatt QC, with an address for service in Luxembourg at the British Embassy, 14 Boulevard Roosevelt,

defendant,

APPLICATION 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

* Language of the case: English.

of 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 United Kingdom has failed to fulfil its obligations under that directive and the EC Treaty,

THE COURT (Third Chamber),

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

Advocate General: P. Léger,
Registrar: R. Grass,

having regard to the Report of the Judge-Rapporteur,

after hearing the Opinion of the Advocate General at the sitting on 13 July 2000,

gives the following

Judgment

1 By application lodged at the Court Registry on 26 February 1999, the Commission of the European Communities brought an action under Article 169 of the EC Treaty (now Article 226 EC) 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 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'), the United Kingdom has failed to fulfil its obligations under the Directive and the EC Treaty.

2 The Directive has the objective, as stated in Article 1 thereof, of reducing water pollution caused or induced by nitrates from agricultural sources and preventing any further such pollution.

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

4 Article 3(1) and (2) provides:

'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 Article 5(1) provides that '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'.

6 Under Article 12(1) the Member States were to bring into force the laws, regulations and administrative provisions necessary to comply with the Directive within two years from its notification.

7 It is apparent from a footnote to Article 12(1) that the Directive was notified to the Member States on 19 December 1991.

8 Paragraphs A.1 and A.2 of Annex I to the Directive provide that waters referred to in Article 3(1) of the Directive are to be identified making use, *inter alia*, of the following criteria: whether surface freshwaters, in particular those used or intended for the abstraction of drinking water, contain or could contain, if action pursuant to Article 5 is not taken, more than the concentration of nitrates laid down in accordance with Council Directive 75/440/EEC of 16 June 1975 concerning the quality required of surface water intended for the abstraction of drinking water in the Member States (OJ 1975 L 194, p. 26); and whether groundwaters 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.

9 After receiving notification of the measures adopted under the Directive by the United Kingdom, the Commission sent that Member State a letter of formal notice on 21 October 1996 in order to obtain further information regarding its implementation of Article 3(1) to (4), Article 4(1)(a) and Article 5(4)(b) of the Directive.

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 it to comply with the opinion within two months from notification.

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.

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

13 The Commission contends first of all that the United Kingdom has failed to comply with the obligations flowing from Article 3(1) of the Directive. This complaint divides into two parts.

14 First, the Commission states that, in the United Kingdom, only surface waters intended for the abstraction of drinking water were identified in accordance with Article 3(1), whereas the Directive also requires the identification of surface freshwaters not intended or used for the abstraction of drinking water which contain or could contain excessive nitrate concentrations.

15 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 comply with the conditions and the criteria laid down by the Directive, in particular by paragraphs A.1 and A.2 of Annex I.

16 Second, the Commission states that only groundwaters intended for human consumption were identified in accordance with Article 3(1), whereas the Directive requires the identification of all 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.

17 The Commission therefore also concludes that the United Kingdom Government has failed to fulfil its obligations under Article 3(1) of the Directive because its definition of groundwaters does not take account of all groundwaters as envisaged by paragraph A.2 of Annex I to the Directive.

18 The Commission complains next that the United Kingdom Government has infringed its obligations resulting from Article 3(2) of the Directive in that it failed to designate vulnerable zones in Northern Ireland under that provision. As at 18 December 1997, no vulnerable zone had been designated there despite the fact that at least one area had been identified under Article 3(1) of the Directive as containing water which was affected by pollution or could be so affected. That list should have been drawn up by 20 December 1995 at the latest. It adds that, while three zones were designated for Northern Ireland as at 11 January 1999, such designation, like that relating to the whole of the United Kingdom, is based on an incorrect definition of waters, as alleged under the first complaint, and therefore necessarily entails the risk that the designation of vulnerable zones required by Article 3(2) will be incorrect.

19 The Commission states, finally, that as at 31 January 1997 the United Kingdom Government had failed, contrary to the requirements of Article 5 of the Directive, to establish action programmes in respect of vulnerable zones designated under Article 3. That obligation should have been met within a period of four years following notification of the Directive, that is to say by 20 December 1995 at the latest.

20 The United Kingdom Government accepts that in the present case the submissions of the Commission are well founded and that the Court should find to that effect. It points out, however, that it had initially interpreted the scope of the Directive differently as regards the identification of 'waters affected by pollution' under Article 3(1) and that the transposition of the Directive into national law was based on that interpretation. It also sets out the implementing measures which it has adopted or are in the process of being adopted in order for it to comply with its obligations under the Directive.

21 In accordance with the third paragraph of Article 189 of the EC Treaty (now 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).

22 Also, the Court has consistently held that the question whether a Member State 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. The Court therefore cannot take account of any subsequent changes (see Case C-364/97 *Commission* v *Ireland* [1998] ECR I-6593, paragraph 8).

23 In the present case, it is clear from the wording of Article 3(1) and (2) and Article 5 of the Directive, read in conjunction with paragraphs A.1 and A.2 of Annex I, that the Member States are obliged to do the following:

— 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, not only waters intended for human consumption but also all surface freshwaters and groundwaters which have or could have a nitrate concentration in excess of 50 milligrams per litre (Article 3(1));

— by 20 December 1993 at the latest, designate as vulnerable zones all known areas of land in their territories which drain into the waters thus identified as affected by pollution in accordance with Article 3(1) (Article 3(2)); and

— by 20 December 1995 at the latest, establish action programmes designed to reduce nitrate pollution of waters and improve water quality in the

vulnerable zones designated under Article 3(2) of the Directive or to remedy those problems (Article 5).

24 It is clear from the documents on the file that, on expiry of the time-limit set in the reasoned opinion, the United Kingdom had not complied with those obligations, as it itself acknowledges.

25 Accordingly, the Commission's action must be considered well founded.

26 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 3(1) and (2) and Article 5 of the Directive, the United Kingdom has failed to fulfil its obligations under that directive.

Costs

27 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 United Kingdom 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 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. **Orders the United Kingdom of Great Britain and Northern Ireland to pay the costs.**

Gulmann Puissochet Macken

Delivered in open court in Luxembourg on 7 December 2000.

R. Grass C. Gulmann

Registrar President of the Third Chamber