# JUDGMENT OF THE COURT (Fifth Chamber)
12 December 1996 *

In Case C-298/95,

**Commission of the European Communities**, represented by Götz zur Hausen, Legal Adviser, acting as Agent, with an address for service in Luxembourg at the office of Carlos Gómez de la Cruz, of its Legal Service, Wagner Centre, Kirchberg,

applicant,

v

**Federal Republic of Germany**, represented by Ernst Röder, Ministerialrat in the Federal Ministry of Economic Affairs, and Bernd Kloke, Oberregierungsrat in the same Ministry, acting as Agents, D-53107 Bonn,

defendant,

APPLICATION for a declaration that, by failing to adopt within the periods prescribed all the measures necessary to comply with Articles 3 and 5 of Council Directive 78/659/EEC of 18 July 1978 on the quality of fresh waters needing protection or improvement in order to support fish life (OJ 1978 L 222, p. 1) and Articles 3 and 5 of Council Directive 79/923/EEC of 30 October 1979 on the quality required of shellfish waters (OJ 1979 L 281, p. 47), the Federal Republic of Germany has failed to fulfil its obligations under the EC Treaty,

* Language of the case: German.

THE COURT (Fifth Chamber),

composed of: J. C. Moitinho de Almeida (Rapporteur), President of the Chamber, L. Sevón, D. A. O. Edward, J.-P. Puissochet and P. Jann, Judges,

Advocate General: F. G. Jacobs,
Registrar: R. Grass,

having regard to the report of the Judge-Rapporteur,

after hearing the Opinion of the Advocate General at the sitting on 17 October 1996,

gives the following

## Judgment

1 By application lodged at the Court Registry on 15 September 1995, the Commission of the European Communities brought an action under Article 169 of the EC Treaty for a declaration that, by failing to adopt within the periods prescribed all the measures necessary to comply with Articles 3 and 5 of Council Directive 78/659/EEC of 18 July 1978 on the quality of fresh waters needing protection or improvement in order to support fish life (OJ 1978 L 222, p. 1) and Articles 3 and 5 of Council Directive 79/923/EEC of 30 October 1979 on the quality required of shellfish waters (OJ 1979 L 281, p. 47), the Federal Republic of Germany has failed to fulfil its obligations under the EC Treaty.

The aim of Directive 78/659 is to protect or improve the quality of those running or standing fresh waters which support or which, if pollution were reduced or eliminated, would become capable of supporting fish belonging to certain species.

According to Article 1(1) thereof, the directive applies to those waters designated by the Member States as needing such protection or improvement. Article 4(1) required Member States to designate salmonid and cyprinid waters, initially within a two-year period following notification of the directive. Member States were also required, under Article 3, to set, for the designated waters, values for the physical and chemical parameters listed in Annex I which are not less stringent than those listed in column I (mandatory values) of that annex, and to endeavour to respect the values in column G (guide values) of that annex. Member States were also required, under Article 5, to establish programmes in order to reduce pollution and to ensure that designated waters would, within five years following their designation, conform to the values which they had set for the parameters. Finally, Articles 6 and 7 of Directive 78/659 state the frequency with which samples should be taken, where samples should be taken, and the analysis methods for determining whether designated waters comply with those parameters.

Under Article 17 of Directive 78/659, Member States were required to bring into force the laws, regulations and administrative provisions necessary to comply with the directive within two years of its notification and forthwith to inform the Commission thereof. Since Directive 78/659 was notified on 20 July 1978, that period expired on 20 July 1980.

Directive 79/923, according to Article 1 thereof, seeks to protect and improve the quality of coastal and brackish waters in order to support shellfish life and growth and thus to contribute to the high quality of shellfish products directly edible by man.

6 Articles 3 to 5 of Directive 79/923 transposed to shellfish waters, *mutatis mutandis*, the provisions contained in Articles 3 to 5 of Directive 78/659, described above, with the exceptions of Article 3(3), concerning certain effluents discharged into the aquatic environment, and Article 5, which allowed Member States a period of six years, instead of five, to ensure that designated waters conformed to the values set by Member States for the parameters indicated in the annex to Directive 79/923.

7 Under Article 15, Member States were required to bring into force the laws, regulations and administrative provisions necessary to comply with the directive within two years of its notification and forthwith to inform the Commission thereof. Since the directive was notified on 5 November 1979, that period expired on 5 November 1981.

8 Since it took the view that, according to the information available to it, the Federal Republic of Germany had not taken all the measures necessary to transpose Articles 3, 4, 5 and 7(1) of Directive 78/659 and Articles 3, 4 and 5 of Directive 79/923, the Commission, on 21 April 1992, gave the German Government notice to submit its observations within a period of two months.

9 By letter of 9 September 1992, the German Government put in issue the need to transpose the directives by formal legislation and the obligation to draw up specific programmes for protecting the waters concerned. It also requested an additional period for designating waters and provided further information concerning the sampling provided for by Directive 78/659.

10 The Commission took the view that those explanations did not alter its position regarding the alleged infringements and so, on 13 January 1994, it sent to the German Government a reasoned opinion requesting it to adopt all the measures necessary to comply with Articles 3, 4, 5 and 7(1) of Directive 78/659 and Articles 3, 4 and 5 of Directive 79/923 within a period of two months.

1 In a letter of 3 May 1994, the German Government accepted that it was necessary to transpose Articles 3 and 4 of the directives by means of binding legislation and notified the measures adopted by a number of *Länder* to transpose those provisions and designate the waters supporting fish life, together with sampling data. However, the German Government continued to insist that it was not necessary to adopt specific programmes under Article 5 of the two directives.

2 Although it decided to abandon its allegations of breach of Article 4 of Directives 78/659 and 79/923 and of Article 7(1) of Directive 78/659, the Commission considered that it still did not have the information which would allow it to conclude that the Federal Republic of Germany had adopted the measures necessary to transpose Articles 3 and 5 of Directives 78/659 and 79/923. It was in those circumstances that the Commission decided to bring this action.

## Article 3 of Directives 78/659 and 79/923

3 The Federal Republic of Germany does not deny that transposition of Article 3 of Directives 78/659 and 79/923, which, under the division of State powers, is the responsibility of the *Länder*, has not yet been accomplished in Germany by means of binding legislation but points out that transposition is under way. The executive authorities of the *Länder*, which must be empowered by the legislatures to adopt transposing regulations, have already been so empowered in six out of the sixteen *Länder*. A draft standard regulation transposing Directive 78/659 has also been drawn up for the *Länder*.

4 The Federal Republic of Germany also rejects the Commission's assertion that non-implementation of the measures required by Directives 78/659 and 79/923 could endanger human health. It maintains that there is no such danger in Germany since limit values for permitted residues were set in the Regulation of 1 September 1994 adopted pursuant to the Lebensmittel-und Bedarfsgegenständegesetz

(German Law on Foodstuffs and Essential Commodities), as amended on 8 July 1993, and these determine whether or not fish from water ways are fit for consumption.

15 As the Commission points out, one of the purposes of the directives at issue is to protect human health through the monitoring of the quality of waters which support, or could support, fish suitable for human consumption, such as salmon, trout, pike or eel, mentioned in Article 1(4) of Directive 78/659, or shellfish 'directly edible by man' in the words of Article 1 of Directive 79/923.

16 In those circumstances, it is particularly important that directives should be transposed by measures which are indisputably binding. In all cases where non-implementation of the measures required by a directive could endanger human health, the persons concerned must be in a position to rely on mandatory rules in order to be able to assert their rights (see, to this effect, Case C-361/88 *Commission* v *Germany* [1991] ECR I-2567, paragraph 16, Case C-59/89 *Commission* v *Germany* [1991] ECR I-2607, paragraph 19, and Case C-58/89 *Commission* v *Germany* [1991] ECR I-4983, paragraph 14).

17 In the present case, even if the amounts of residue permitted in foodstuffs are, under other national legislative provisions, subject to limit values, the Federal Republic of Germany has failed to demonstrate that, in the event of non-implementation of the measures required by Directives 78/659 and 79/923, consumption of fish or shellfish will not present any danger for human health.

18 In all events, as regards the procedural difficulties relied on by the German Government to explain the delay in transposing Directives 78/659 and 79/923, it is sufficient to recall that, as the Court has held repeatedly, a Member State may not plead provisions, practices or circumstances existing in its internal legal system in order to justify a failure to comply with the obligations and time-limits laid down in a directive (see, in particular, Case C-147/94 *Commission* v *Spain* [1995]

ECR I-1015, paragraph 5, Case C-259/94 *Commission* v *Greece* [1995] ECR I-1947, paragraph 5, and Case C-253/95 *Commission* v *Germany* [1996] ECR I-2423, paragraph 12).

19 It must accordingly be held that, by failing to adopt within the periods prescribed all the measures necessary to comply with Article 3 of Directives 78/659 and 79/923, the Federal Republic of Germany has failed to fulfil its obligations under the Treaty.

## Article 5 of Directives 78/659 and 79/923

20 As regards Directive 78/659, the German Government submits that the action programmes existing in the *Länder* since the mid-1950s for reducing water pollution are purification programmes which improve the quality of waters and may therefore be recognized as conforming to Article 5 of Directive 78/659. According to the German Government, protection of the quality of fresh waters supporting fish life cannot be considered in isolation but is part of the overall objective of protecting the quality of all waters, an objective pursued in Germany by the preventive and general establishment of minimum Federal standards designed to reduce pollution of water caused by effluent. The German Government adds that, over the past two decades, the *Länder* have implemented those standards by adopting well-funded action programmes which have been particularly effective, as is evidenced by a significant improvement in the quality of fresh waters in Germany, particularly those covered by Directive 78/659, between 1976 and 1990.

21 As regards Directive 79/923, the German Government takes the view that it is likewise unnecessary to establish specific programmes for reducing pollution as the monitoring regularly carried out in the five zones requiring protection for shellfish waters along the North Sea shows that the parameters of the directive are being

complied with and that purification measures are unnecessary. Transposition in the proper form is, however, planned or already under way in those *Länder* which have shellfish waters.

22 It must be held, first, that Article 5 of Directives 78/659 and 79/923 lays down an obligation for Member States to establish programmes in order to reduce pollution and to ensure that the designated waters conform, within respectively five and six years following their designation, to both the values set for the parameters indicated in the respective annexes and the notes contained in columns G and I thereof.

23 As the Advocate General observes in point 17 of his Opinion, Directives 78/659 and 79/923 set out, in their respective annexes, some 14 and 12 precise physical and chemical parameters for which Member States set values. Article 6 of each of those directives also determines, for the purpose of implementing Article 5, the percentages of samples which must comply with those values in order for the designated waters to be regarded as satisfying the directives' requirements.

24 It follows clearly from the wording of Article 5 of Directives 78/659 and 79/923 as well as from the detailed arrangements for monitoring water quality laid down by those directives that Member States have an obligation to establish specific programmes in order to reduce pollution of fresh waters and shellfish waters within five and six years respectively.

25 As regards Directive 78/659, general water-purification programmes, such as those relied on by the German Government, cannot therefore be regarded as constituting an adequate transposition of Article 5.

26 It should also be stressed that the objective of reducing water pollution caused by effluent pursued by such general programmes does not necessarily correspond to the more specific objective of Directive 78/659, which is to improve the quality of fresh waters in order to support fish life.

27 As regards Directive 79/923, the fact that shellfish waters meet the requirements of the directive, as the German Government claims, likewise cannot exempt it from the obligation to establish specific programmes in accordance with Article 5 of that directive.

28 The results notified by the German Government relate only to samples taken in the *Land* of Lower Saxony in 1991 and provide no evidence whatever that the shellfish waters in the *Länder* concerned meet the requirements of Directive 79/923.

29 In any event, the fact that samples taken in a single *Land* at a particular time meet the requirements of Directive 79/923 cannot release a Member State from the obligation under Article 5 of that directive to establish specific programmes applicable to all designated shellfish waters with the aim of reducing pollution in those waters within six years.

30 It must therefore be held that, by failing to adopt within the periods prescribed all the measures necessary to comply with Article 5 of Directives 78/659 and 79/923, the Federal Republic of Germany has failed to fulfil its obligations under the Treaty.

## Costs

31 Under Article 69(2) of the Rules of Procedure, the unsuccessful party is to be ordered to pay the costs. Since the Federal Republic of Germany has been unsuccessful, it must be ordered to pay the costs.

On those grounds,

THE COURT (Fifth Chamber)

hereby:

1. **Declares that, by failing to adopt within the periods prescribed all the measures necessary to comply with Articles 3 and 5 of Council Directive 78/659/EEC of 18 July 1978 on the quality of fresh waters needing protection or improvement in order to support fish life and with Articles 3 and 5 of Council Directive 79/923/EEC of 30 October 1979 on the quality required of shellfish waters, the Federal Republic of Germany has failed to fulfil its obligations under the EC Treaty;**

2. **Orders the Federal Republic of Germany to pay the costs.**

Moitinho de Almeida Sevón Edward

Puissochet Jann

Delivered in open court in Luxembourg on 12 December 1996.

R. Grass

Registrar

J. C. Moitinho de Almeida

President of the Fifth Chamber