OPINION OF ADVOCATE GENERAL GEELHOED

delivered on 31 May 2001 [1]

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1 — Original language: Dutch.

I — Introduction

1. In these proceedings the Commission of the European Communities is applying to the Court, pursuant to Article 226 EC, for a declaration that, by failing to adopt the laws, regulations and administrative provisions necessary for the implementation of Council Directive 91/676/EEC of 12 December 1991 concerning the protection of waters against pollution caused by nitrates from agricultural sources[2] (hereinafter 'the Directive'), the Italian Republic has failed to fulfil its obligations under that directive. Specifically, the Commission's application seeks a declaration of failure to comply with Articles 5, 6 and 10 of the Directive, in conjunction with Annexes III, IV and V.

2. In a previous judgment, of 25 February 1999,[3] the Court has already found that Italy failed to fulfil its obligations under Article 3(2) of the Directive. I should emphasise that that judgment, whose subject-matter is connected to this case, was delivered after the reasoned opinion, but before the lodging of the present application.

2 — OJ 1991 L 375, p. 1.

3 — Case C-195/97 *Commission* v *Italy* [1999] ECR I-1169.

II — Legal framework

3. The Directive has the objective of reducing water pollution caused directly or indirectly by nitrates from agricultural sources (Article 1). Member States must identify waters affected by pollution and those which could be affected by pollution if action is not taken, in accordance with the criteria set out in Annex I to the Directive (Article 3(1)). Member States must designate the vulnerable zones within a two-year period following the notification of the Directive, which took place on 19 December 1991 (Article 3(2)).

4. In order to attain the objectives of the Directive, Member States must establish action programmes for vulnerable zones within two years of their designation (Article 5(1)). As regards the action programmes, Article 5 provides as follows:

> '2. An action programme may relate to all vulnerable zones in the territory of a Member State or, where the Member State considers it appropriate, different programmes may be established for different vulnerable zones or parts of zones.

3. Action programmes shall take into account:

(a) available scientific and technical data, mainly with reference to respective nitrogen contributions originating from agricultural and other sources;

(b) environmental conditions in the relevant regions of the Member State concerned.

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.

...'

5. The mandatory measures are listed in Annex III to the Directive, which I quote in full given its importance in this case.

'1. The measures shall include rules relating to:

(1) periods when the land application of certain types of fertiliser is prohibited;

(2) the capacity of storage vessels for livestock manure; this capacity must exceed that required for storage throughout the longest period during which land application in the vulnerable zone is prohibited, except where it can be demonstrated to the competent authority that any quantity of manure in excess of the actual storage capacity will be disposed of in a manner which will not cause harm to the environment;

(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.

2. These measures will ensure that, for each farm or livestock unit, the amount of livestock manure applied to the land each year, including by the animals themselves, shall not exceed a specified amount per hectare.

The specified amount per hectare shall be the amount of manure containing 170 kg N. However:

(a) for the first four year action programme Member States may allow an amount of manure containing up to 210 kg N;

(b) during and after the first four-year action programme, Member States may fix different amounts from those referred to above. These amounts must be fixed so as not to prejudice the achievement of the objectives specified in Article 1 and must be justified on the basis of objectives criteria, for example:

— long growing seasons,

— crops with high nitrogen uptake,

— high net precipitation in the vulnerable zone,

— soils with exceptionally high denitrification capacity.

If a Member State allows a different amount under subparagraph (b), it shall inform the Commission which will examine the justification in accordance with the procedure laid down in Article 9.

3. Member States may calculate the amounts referred to in paragraph 2 on the basis of animal numbers.

4. Member States shall inform the Commission of the manner in which they are applying the provisions of paragraph 2. In the light of the information received, the Commission may, if it considers necessary, make appropriate proposals to the Council in accordance with Article 11.'

6. Article 6 of the Directive concerns the monitoring of the nitrate concentration and provides as follows:

'1. For the purpose of designating and

revising the designation of vulnerable zones, Member States shall:

(a) within two years of notification of the Directive, monitor the nitrate concentration in freshwaters over a period of one year:

(i) at surface water sampling stations, laid down in Article 5(4) of Directive 75/440/EEC and/or at other sampling stations which are representative of surface waters of Member States, at least monthly and more frequently during flood periods;

(ii) at sampling stations which are representative of the groundwater aquifers of Member States, at regular intervals and taking into account the provisions of Directive 80/778/EEC;

(b) repeat the monitoring programme outlined in (a) at least every four years, except for those sampling stations where the nitrate concentration in all previous samples has been below 25 mg/l and no new factor likely to increase the nitra[t]e content has appeared, in which case the monitoring programme need be repeated only every eight years;

(c) review the eutrophic state of their fresh surface waters, estuarial and coastal waters every four years.

2. The reference methods of measurement set out in Annex IV shall be used.'

7. Annex IV lays down the reference methods. It provides as follows for chemical fertilisers:

'Nitrogen compounds shall be measured using the method described in Commission Directive 77/535/EEC of 22 June 1977 on the approximation of the laws of the Member States relating to methods of sampling and analysis for fertilisers, as amended by Directive 89/519/EEC.'

For freshwaters, coastal waters and marine waters the rule is as follows:

'Nitrate concentration shall be measured in accordance with Article 4a(3) of Council Decision 77/795/EEC of 12 December 1977 establishing a common procedure for the exchange of information on the quality of surface fresh water in the Community, as amended by Decision 86/574/EEC.'

8. Article 10 requires Member States to inform the Commission regularly.

'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.'

9. Annex V specifies the information to be contained in the reports in each case. The following is required:

'1. A statement of the preventive action taken pursuant to Article 4.

2. A map showing the following:

(a) waters identified in accordance with Article 3(1) and Annex I indicating for each water which of the criteria in Annex I was used for the purpose of identification;

(b) the location of the designated vulnerable zones, distinguishing between existing zones and zones designated since the previous report.

3. A summary of the monitoring results obtained pursuant to Article 6, including a statement of the considerations which led to the designation of each vulnerable zone and to any revision of or addition to designations of vulnerable zones.

4. A summary of the action programmes drawn up pursuant to Article 5 and, in particular:

(a) the measures required by Article 5(4)(a) and (b);

(b) the information required by Annex III(4);

(c) any additional measures or reinforced actions taken pursuant to Article 5(5);

(d) a summary of the results of the monitoring programmes implemented pursuant to Article 5(6);

(e) the assumptions made by the Member States about the likely timescale within which the waters identified in accordance with Article 3(1) are expected to respond to the measure in the action programme, along with an indication of the level of uncertainty incorporated in these assumptions.'

III — Facts and procedure

10. On 25 April 1997 the Commission sent a letter of formal notice to the Italian Government on account of the fact that it had failed to send the report described in Article 10 of the Directive. The letter also pointed out that the Commission had not been informed of the action programmes described in Article 5 and the monitoring laid down in Article 6. The Italian Government replied to the formal notice by letter of 16 July 1997, informing the Commission of the measures adopted in Italy.

11. The Commission was still not satisfied with the information, and issued a reasoned opinion on 19 February 1998, claiming that Italy had failed to fulfil its obligations under Articles 5, 6 and 10 of the Directive. In response, the Italian authorities sent a detailed progress report to the Commission on 18 September 1998, concerning developments in the procedure for implementing the Directive.

12. While this exchange of letters was taking place, Case C-195/97 was before the Court (see point 2 of this Opinion), which resulted in judgment in the following terms:

'Declares that, by failing to adopt and communicate to the Commission within the

prescribed period the laws, regulations and administrative provisions necessary to implement Council Directive 91/676/EEC of 12 December 1991 concerning the protection of waters against pollution caused by nitrates from agricultural sources, and in particular by failing to comply with the obligation laid down in Article 3(2) thereof, the Italian Republic has failed to fulfil its obligations under Article 12(1) thereof.'

13. On 11 May 1999 a new legislative measure was enacted in Italy by Legislative Decree No 152 (published on 29 May 1999). Among other things, that decree establishes the rules on the designation of vulnerable zones in accordance with Article 3 of the Directive. The Italian Government considers that it has complied with the judgment, referred to above, in Case C-195/97, by means of that provision.

IV — Assessment of the dispute

A — *Preliminary issues*

14. In the present case before us two preliminary issues of a procedural nature, raised by the Italian Government, are of fundamental importance:

— the objection of inadmissibility, on the ground that the application contains complaints different from those raised by the Commission in the reasoned opinion;

— the assertion that, by this application, the Commission is claiming that the Court should deliver a judgment identical to that in Case C-195/97,[4] in which Italy was found to have failed to fulfil its obligations under the Directive. The Italian Government cites the principle of *non bis in idem* in this respect.

1. Admissibility of the application

(a) Arguments of the parties

15. The Italian Government and the Commission stated their respective positions on the first preliminary issue in detail during the written phase of the proceedings and at the hearing. I shall summarise the main arguments stated by each of the parties, before giving my opinion.

4 — See point 2 of this Opinion.

16. According to the Italian Government, the application differs from the reasoned opinion of 19 February 1998 in four significant ways:

(a) the Commission has tacitly abandoned its fundamental complaint concerning the failure to implement the Directive;

(b) the complaint relating to Article 5 has been changed. It no longer concerns the absence of programmes, but now refers to the absence of action programmes which comply with the description in Article 5(1);

(c) the complaint relating to Article 6 has been changed and now concerns the incomplete and incorrect nature of the monitoring;

(d) the complaint relating to Article 10 has been changed and now concerns the failure to submit a full report.

17. According to the Italian Government, the Commission made those changes to the complaints after examining the report of 18 September 1998. However, in its view, the Commission should have re-submitted the complaints, which had been changed substantially, in the pre-litigation procedure, either by drawing up a new reasoned opinion or by supplementing the first reasoned opinion. The Italian Government considers that the Commission has prejudiced its rights of defence, as it was only in the application that the measures adopted by Italy were contested, for the first time. In its rejoinder it asserts that certain elements of the application have no basis in the reasoned opinion, in particular the incomplete nature of the report described in Article 10 and the accusation that the monitoring described in Article 6 did not comply with the Directive in the case of some regions, indicated by name.

18. The Commission disputes the validity of the objections by the Italian Government, both in fact and in law.

19. The Commission argues that the reasoned opinion:

— indicates clearly the requirements to be met by the action programmes, monitoring and report in accordance with Articles 5, 6 and 10 of the Directive respectively;

— finds that Italy failed to fulfil its obligations and, despite the letter of

formal notice of 25 April 1997, that it did not adopt the measures necessary to enable the Commission to verify the implementation of those obligations;

— concludes that Italy failed to fulfil its obligations under Articles 5, 6 and 10 of the Directive.

20. According to the Commission, the complaints are not directed to the absence of the action programmes, monitoring and report, but to the fact that those items do not meet the requirements of the Directive.

21. Despite the fact that the two-month period laid down in the reasoned opinion had long expired, the Commission closely examined the response of the Italian authorities, provided in their letter of 18 September 1998, to determine whether it justified the conclusion that Italy had fulfilled its obligations under Articles 5, 6 and 10 of the Directive. It emerged from that letter that the Italian authorities had in fact adopted some measures, but that those measures did not comply with the requirements laid down in the Directive.

22. With regard to the legal basis referred to by the Italian Government, the Commission points out that the procedure under Article 226 EC does not only aim to protect the rights of the Member States, but also aims to define the subject-matter of the proceedings before the Court. In the present case, the assertion that the complaints in the application were changed as compared with the wording given to them in the reasoned opinion is incorrect. The objections of the Commission were once again not that the programmes, monitoring and reports were omitted completely, but that they were incomplete and incorrect. Therefore, in its opinion, the Italian Government failed to implement Articles 5, 6 and 10 of the Directive.

23. The Commission rejects the argument of the Italian Government that its rights of defence were infringed. The Commission examined the response to the reasoned opinion in full compliance with the rules of the pre-litigation procedure, even though it was sent late. As soon as it became clear that, on the basis of the information submitted, the conclusion could not be reached that Italy had fulfilled its obligations under the Directive fully and correctly, it brought this action in accordance with the normal procedure laid down in cases of failure to fulfil obligations.

24. The Commission adds that the arguments on the substance of the case stated by the Italian Government, in its defence, were

substantially the same as those contained in its letter of 18 September 1998. The Commission considers that this proves that in the case at issue the rights of defence of the Italian Government have not been prejudiced.

(b) Criteria of admissibility

25. Before I give my view on this question, I should like to point out that, as the Court has consistently held, the existence of a failure of a Member State to fulfil obligations must be assessed in relation to the situation as it existed on the expiry of the period laid down in the reasoned opinion. The Court cannot take account of later changes. [5]

26. The parties agree that the Italian Government was late in replying to the reasoned opinion in its letter dated 18 September 1998. I do not intend, however, to conclude that the measures described therein were therefore late. The mere fact that the Commission tried to verify whether they allowed the obligations under Articles 5, 6 and 10 of the Directive to be complied with and the fact that the Commission, in this action, has not raised any complaint concerning the possible lateness of those measures, lead me to consider that the problem of their punctuality is not under discussion here. This does not, of course, apply to implementation measures adopted after the letter of 18 September 1998.

27. On reading the reasoned opinion and the application we can immediately see a clear difference. The opinion is a brief document in which Italy, as a Member State, is charged in rather general terms with failing to comply with its obligations under Articles 5, 6 and 10. It is also true that the opinion refers to the written response by the Italian Government on 16 July 1997 to the letter of formal notice of 25 April 1997. The Commission uses this point to conclude that this information is insufficient for it to be possible to find that Italy had complied with the obligations under Articles 5, 6 and 10 of the Directive. However, the application examines the measures adopted by Italy in the meantime in detail and states in what respects they do not meet the requirements of the Directive. It is quite clear that the emphasis is mainly on incorrect implementation, and not as much on failure to implement. The problem now is to ascertain whether that shift of emphasis renders the Commission's application inadmissible.

28. I shall begin by referring to the settled case-law of the Court on this point, as

5 — See, *inter alia*, Case C-185/96 *Commission* v *Greece* [1998] ECR I-6601, paragraph 18.

stated, *inter alia*, in Case C-96/95 *Commission* v *Germany*: [6]

'22 On that point, it should be noted first that the purpose of the pre-litigation procedure is to give the Member State concerned an opportunity, on the one hand, to comply with its obligations under Community law and, on the other, to avail itself of its right to defend itself against the complaints made by the Commission ...

23 As the Court has consistently held... the subject-matter of an action brought under Article 169 of the Treaty is delimited by the pre-litigation procedure provided for by that article. Consequently, the action cannot be founded on any complaints other than those formulated in the reasoned opinion ...

24 The Court has also held... that the reasoned opinion must contain a cogent and detailed exposition of the reasons which led the Commission to the conclusion that the Member State concerned had failed to fulfil one of its obligations under the Treaty.'

6 — Case C-96/95 *Commission* v *Germany* [1997] ECR I-1653.

29. In my view, it is clear from those passages that the purpose of the reasoned opinion is to delimit and determine the subject-matter of the proceedings before the Court. The purpose of the delimitation and determination of the charge made against the Member State concerned is to protect the rights of that State. In the case before us, we must assess whether the reasoned opinion was sufficiently clear and detailed to define the subject-matter of the procedure and whether the application remained within the limits of that subject-matter.

30. I shall answer that question as follows. The reasoned opinion provides the framework within which the application before the Court must remain. There would only be inadmissibility if the application refers to more or other obligations than those described in the reasoned opinion. In other words, the reasoned opinion defines the boundaries within which the application must remain: no different obligation, no other obligation. This does not mean that the application must, in terms of its content, agree with the opinion in every way: the complaints can be more specific than those stated in the reasoned opinion, provided that they concern the same obligations.

31. That conclusion also follows from the procedure described in Article 226 EC. It is by its nature swift and dynamic. It is the Commission which puts forward the charges against the Member State. On the basis of the response from that Member State, it decides whether to issue a reasoned opinion and on the content of that opinion. In its subsequent response the Member

State then still has the opportunity to state its view on the content of the opinion. The Commission can thus decide whether to proceed with the submission of an application and which of the original complaints should be included. During the course of the whole procedure the scope of the original complaints may be reduced and become more specific, depending on the shortcomings found. In practice, it is often clear that the scope of the failure to fulfil obligations as originally complained of is reduced in the course of the procedure, as the Member State proceeds to fulfil those obligations.

32. From the above analysis two criteria can be inferred concerning the admissibility of the application:

— it must remain within the scope of the subject-matter defined in the reasoned opinion;

— it must give a sufficiently precise definition of the failures to fulfil obligations which are complained of, taking into consideration the information provided by the Member State concerned in the pre-litigation procedure.

In short, the application must constitute the foreseeable logical progression of the dialogue which took place in the pre-litigation procedure between the Commission and the Member State. If it fulfils this requirement, there is no question of a breach of the rights of defence. On this point, I would recall that in the case of *Commission* v *Germany*[7] the Court gave a decision on admissibility, and considered that a simple general indication of the specific points in respect of which the requirements of the directive were not complied with was sufficient. This leaves the possibility that imprecise charges may, as in that case, lead to dismissal of the application.

(c) Assessment

33. With regard to this case specifically, the general submission of the Italian Government that the application is not admissible, as it includes complaints which differed from those stated by the Commission in its reasoned opinion, is not convincing.

34. The following points emerge from the pre-litigation procedure:

— in the letter of formal notice of 25 April 1997 the Commission charges

7 — Case C-431/92 *Commission* v *Germany* [1995] ECR I-2189.

the Italian Republic with failing to fulfil its obligations under Articles 5, 6 and 10 of the Directive;

— in its reply, by letter of 16 July 1997, the Italian Government produced extensive documentation in an attempt to show that it had duly implemented those obligations;

— in the reasoned opinion of 19 February 1998 the Commission describes that information as incomplete as regards geographical scope and actual implementation. It concludes that Italy has not satisfactorily fulfilled its obligations under Articles 5, 6 and 10 of the Directive;

— in its subsequent detailed reply of 18 September 1998, the Italian Government states once again the action it had taken up to that time to comply with the obligations under the Directive;

— on the basis of all of the above the Commission concluded that the implementation measures taken by the Italian authorities were still insufficient from the geographical point of view and as regards their content. Its complaints in the application are directed, in particular, to persisting incompleteness and insufficiencies.

35. I conclude from the above that, in its application, the Commission has remained within the scope of the subject-matter of the proceedings as defined in the reasoned opinion. It is true that the emphasis of the complaints shifts from a failure to comply (adequately) to insufficient and incomplete implementation and that the complaints in its application became more specific and more precise; however the essential content remains the same: Italy has failed to fulfil its obligations under Articles 5, 6 and 10 of the Directive. The scope of the complaints became narrower in the course of the pre-litigation procedure, but remained the same in terms of content and tenor.

36. On those grounds I propose that the argument of the Italian Government concerning the inadmissibility of the application should be rejected.

37. It remains none the less to examine, in the assessment of the individual complaints, whether they satisfy the requirements of clarity and precision.

2. Legal effects of the judgment in Case C-195/97

(a) Arguments of the parties

38. By the judgment of 25 February 1999, [8] Italy has already been found to have failed to comply with its obligations under Article 3(2) of the Directive. Italy had failed to designate the vulnerable zones. Legislative Decree No 152 of 11 May 1999 was enacted to comply with that judgment. The Italian Government states that the principle of *non bis in idem* precludes the Commission from initiating a second infringement procedure, subsequently, which essentially concerns the same problem.

39. The Commission contends that the position taken by the Italian Government is untenable in the light of the judgment of 13 April 2000 in *Commission* v *Spain*. [9] In that judgment Spain was found to have failed to prepare action programmes, as stated in Article 5 of the Directive, after previously having been found — *inter alia* — to have failed to designate vulnerable zones as laid down under Article 3 of the Directive. [10] In that context, the Commission also refers to the judgment of 2 August 1993 in *Commission* v *Spain*, [11] which concerned the late implementation of Directive 79/409/EEC, on the conservation of wild birds. [12]

(b) Assessment

40. The positions taken by the Commission and Italy differ fundamentally on the significance of the consequences of the link between this case and the proceedings which led to the judgment in Case C-195/97. Given this difference of opinion I think it is important to begin by placing the dispute in a more general context.

41. Under the directives on environmental protection, such as the directive in this case, which aim to reduce current levels of pollution caused by particular substances, to avoid further environmental damage, and in the meantime, to remedy the damage

8 — See footnote 3.

9 — Case C-274/98 *Commission* v *Spain* [2000] ECR I-2823.

10 — Case C-71/97 *Commission* v *Spain* [1998] ECR I-5991.

11 — Case C-355/90 *Commission* v *Spain* [1993] ECR I-4221, paragraphs 20 to 22.

12 — Council Directive 79/409/EEC of 2 April 1979, OJ 1979 L 103, p. 1.

caused, Member States are obliged to adopt a number of measures. These measures are interlinked and are characterised by being extended over a long period of time. It is only through a consistent effort that it is possible to achieve those aims (in this case, to improve water quality by reducing pollution by nitrates).

42. The time factor plays an important role in the implementation of a directive. The measures laid down by the directive must be adopted within the time-scales stated to avoid further damage. They must also be harmonised within the time laid down in order to be effective. For that reason, action programmes were laid down. Non-compliance with the timetable constitutes a fundamental failure to fulfil obligations, which is detrimental to the intended practical effectiveness of the directive.

43. In my opinion, it is possible to identify four important reasons for which, specifically in the case of this directive, actual implementation of the actions provided for therein merits close attention from the Member States. First, this directive is intended to bring about an improvement in the quality of the environment, taking into consideration the differences within and between Member States. There are many different sources of water pollution due to nitrates, the severity of the pollution can vary considerably and the capacities for absorption by the natural environment are not the same everywhere. Accordingly, the implementation of the Directive is characterised by a wide discretion for the national, regional and local authorities. Second, the achievement of the aims stated in the Directive necessarily requires a number of activities spread over many years. This directive certainly cannot be implemented simply by transposing it into the national legal system. Third, the implementation of this directive may require the introduction of some harsh restrictions for certain agricultural activities, such as, for example, intensive farming or other forms of land use which involve a high level of nitrate pollution. It is possible that resistance from the class of operators concerned may lead to delays and gaps in the implementation of the Directive. Fourth, the guarantee of an equal level of environmental quality within the Community is at the heart of the problem of equality in conditions of competition in the agricultural sector. If the Member States implement this directive on nitrates with a substantially different level of commitment, serious distortions to competition would ensue.

44. It is clear from the foregoing that vigilance concerning the implementation of and compliance with the Directive is certainly not a simple matter, but nevertheless it is vitally important for the aims stated therein. For that reason the Directive introduces a system of action programmes, monitoring and reports. This system, on

one hand, ensures that, taking local circumstances into account, measures will be adopted which will effectively lead to a reduction in nitrate pollution. On the other hand, it makes it possible to ensure compliance with the Directive.

45. In the light of the foregoing considerations, I am of the view that the late designation of vulnerable zones as stated in Article 3(2) cannot have the legal effect that the Member State concerned is released from its obligation to comply with the remaining obligations under the Directive. That would be equivalent to rewarding late implementation of part of the Directive. In the case-law referred to above (point 39) the Court expressly excluded that result on several occasions.

46. The Italian Government's submission that the present proceedings are substantively identical to those which gave rise to the judgment of 25 February 1999 is also unsustainable. The obligations laid down in Article 3 of the Directive are not substantively identical to those in Articles 5, 6 and 10.

47. In my opinion, there is no substantive link between the obligations such that failure to comply with the obligation of designation laid down in Article 3 necessarily entails the impossibility of fulfilling the obligations under Articles 5, 6 and 10.

48. In principle, the setting-up of the action programmes as described in Article 5 of the Directive may take place only for the designated vulnerable zones. However, if the official designation is late, the Directive does not preclude measures to be taken in the meantime for the preparation for the action programmes. The late designation of the vulnerable zones certainly may not, as stated in the case-law referred to in point 39, lead to the period for the setting-up of the action programmes being extended by two years after the late designation of the vulnerable zones.

49. The monitoring to be carried out on the basis of Article 6 of the Directive is clearly linked to the vulnerable zones, mentioned in Article 3, but it may be carried out even without the zones being designated. Even more than this, it can be inferred from Article 6 that the designation of the vulnerable zones takes place on the basis of the earlier monitoring, as indicated in that article.

50. The obligation to present a report, as stated in Article 10 of the Directive, may, without further analysis, be considered to be unconnected with the designation of vulnerable zones.

V — Substance of the case

A — *Complaint relating to Article 5 of the Directive*

1. Arguments of the parties

51. In its application the Commission lists a number of factors from which, in its view, it is evident that Italy has failed to comply with its obligations under Article 5 of the Directive:

— on the date on which the action was brought before the Court, Italy had not yet established any action programme complying with the requirements under Article 5 of the Directive;

— for the vast majority of its territory, as stated in the judgment of 25 February 1999, Italy had not designated any vulnerable zones. Consequently, it was impossible to draw up any action programme appropriate to the environmental conditions in which it should have been applied;

— for central and southern Italy no measures from among those indicated in Annex III to the Directive were adopted. This concerns specifically the Regions of Abruzzi, Puglia and Calabria, and also, in practice, other regions;

— for certain regions in northern Italy (Piedmont, Lombardy, Veneto and Emilia Romagna) not all the specific obligations relating to the action programmes described in Annex III were fulfilled;

— the initiatives of the Italian authorities are insufficiently coordinated and too general in nature.

52. The Commission then gives an overview of the initiatives which were in any case adopted in Italy. In the Commission's view, these were insufficiently coordinated, too general and incomplete and could not therefore meet the requirements under Article 5 of the Directive.

53. The Italian Government points out that it had already designated vulnerable zones in Piedmont, Lombardy, Veneto and Emilia Romagna. Action programmes were established for those zones. For the remaining regions action programmes were not established as no vulnerable zone had been designated.

54. In the reply and rejoinder the debate between the Commission and the Italian Government is directed to the defence of the Italian Government, mentioned above, to the effect that it was not possible to implement Article 5 of the Directive until the vulnerable zones were designated.

2. Assessment

55. The assessment of this complaint can, in the light of the foregoing, be brief and can be summarised as follows. For part of the territory — central and southern Italy — the Italian authorities had not established any action programme on the expiry of the period laid down in the reasoned opinion. The Italian Government does not dispute that point, but states in its defence that the establishment of the programmes was also not possible, as the vulnerable zones had not been designated. As I have already pointed out at point 45 of this Opinion, that defence cannot succeed. For the four northern regions (Piedmont, Lombardy, Veneto and Emilia Romagna) some action programmes were drawn up but, according to the Commission, they did not meet the requirements of the Directive, *inter alia* because a number of measures required by Annex III to the Directive were not taken. The Italian Government objected to this complaint, describing it as 'ambiguous' and 'general', but did not dispute the validity of the Commission's assertion. It also did not discuss the examples given by the Commission of measures missing from the action programmes. In those circumstances, it is in my view sufficiently established that the Italian Government did not provide for action programmes which met the requirements of the Directive, even for the four northern regions indicated.

B — *Complaint relating to Article 6 of the Directive*

1. Arguments of the parties

56. The Commission recalls that Article 6 requires Member States to monitor the concentration of nitrates. In particular, the Directive provides for a first series of

monitoring operations in the year up to 20 December 1993 and afterwards to repeat the monitoring every four or eight years, depending on the degree of pollution.

57. It is clear from the information produced by the Italian Government that in at least five regions the monitoring was not carried out in accordance with the Directive, that in five other regions and two provinces the monitoring was carried out in a partially unsatisfactory manner, and that there was no information at all for three regions (Abruzzi, Puglia and Calabria). Consequently, Italy has not fully complied with its obligations under Article 6 of the Directive.

58. The Italian Government holds the view that Article 6 concerns implementation measures which cannot be dissociated from the designation of vulnerable zones under Article 3. In its view, failure to implement Article 6 only exists if it involves a breach of Article 3 of the Directive, failing to designate the vulnerable zones. The Commission does not claim that the incomplete monitoring led to a breach of Article 3. Alternatively, the Italian Government considers the complaint by the Commission to be unfounded, as it is stated in general and imprecise terms and is not substantiated. Finally, it considers that the monitoring was carried out, in application of Annex IV, within the framework of the directives specified therein.

59. In its reply, the Commission states that the obligation under Article 6 is a specific obligation which is quite distinct from the other obligations under the Directive. A correct application of Article 6 requires the national authorities to adhere to the time-limits and procedures laid down in that article. It is not sufficient to carry out the monitoring prescribed in the directives mentioned in Article 6, the results of which are sent to the Commission in accordance with Council Directive 91/692/EEC standardising and rationalising reports on the implementation of certain directives relating to the environment. [13] In particular, Directive 91/676 lays down different requirements concerning the frequency of sampling, networks of sampling points and the interpretation and treatment of the data obtained. The Commission also points out that Directive 91/692 was adopted after Directive 91/676, but that it does not refer to it. In short, the information provided on the basis of Directive 91/692 has no value for the purposes of the application of Directive 91/676. Finally, the Commission recalls having asked the Italian authorities in the pre-litigation procedure to demonstrate that they had complied with Article 6. The data produced shows that this was not the case.

13 — Council Directive 91/692/EEC of 23 December 1991 (OJ 1991 L 377, p. 48).

60. In its rejoinder the Italian Government states that the Commission did not specify why it claims the Directive was not implemented in at least five regions. The Commission should have made detailed reference to the data provided and should have indicated the shortcomings found on the basis of the data. In addition, the Commission could not have based the alleged non-compliance on lack of information. Article 6 does not contain any obligation to provide information on the part of the Member States. It is also clear from Annex V(3) to the Directive that a Member State must provide at least an overview of the monitoring results. [14]

2. Assessment

61. The primary defence raised by the Italian Government to this complaint appears to be based on the fact that under Article 6 there is no obligation for a Member State which is unconnected with the designation of vulnerable zones. That defence clearly conflicts with the wording and the purpose of Article 6. The monitoring, in the form of samples, must provide data as a basis for the designation of vulnerable zones. In addition, this monitoring has a role in evaluating progress in achieving the Directive's aims.

14 — The French text of the Directive gives 'résumé', the English text 'summary' and the Italian text 'sommario'.

62. I find equally unconvincing the Italian Government's contention that the Commission could not infer non-compliance with Article 6 of the Directive from lack of information, as there is in that article no specific obligation to provide information. The Commission can, within the framework of the pre-litigation procedure under Article 226 EC, ask Member States for all the information necessary to verify whether a Member State is in compliance with its obligations under the Treaty. Member States are obliged to provide this information to enable the Commission to fulfil its supervisory duties under Article 211 EC. If a Member State cannot or will not provide the information requested, within the framework of the procedure under Article 226 EC, concerning the fulfilment of its obligations within the period prescribed for that purpose, the Commission may thus infer that the Member State is not in compliance with its obligations. It is always only on the basis of complete and correct information that the Commission can find in the various phases of the pre-litigation procedure that the Member State concerned is currently in compliance with its obligations under the Treaty.

63. I attach more importance to the Italian Government's defence to the effect that the complaint by the Commission is too general, insufficiently precise and not substantiated. The Commission does not specify on what basis it is apparent that in at least five Italian regions the monitoring was not carried out in accordance with the Directive and that in five other regions and two provinces the monitoring was carried out partially unsatisfactorily. From the consid-

erations set out above at point 33 et seq., it may be seen that the Commission, when it charges a Member State with inadequate and incomplete implementation of its obligations, must give sufficiently clear and detailed reasons for that charge. [15] The application is lacking in that respect. It does not contain any information which is clear and precise enough to be able to verify on that basis whether in the regions concerned the obligation of monitoring was carried out in an insufficient and incomplete manner. Consequently, I consider this complaint not to be made out in so far as concerns the incorrect and/or partially unsatisfactory implementation of Article 6 of the Directive in the Regions of Liguria, Lombardy, Veneto, Marche and Campania, on one hand, and Piedmont, Umbria, Lazio, Molise, Sicily and the Provinces of Trento and Bolzano, on the other hand.

64. The situation regarding the complaint concerning the monitoring in the Regions of Abruzzi, Puglia and Calabria is different. The Commission states, without being contradicted by the Italian Government, that for those regions there is absolutely no information. Nor does the Italian Government claim that the monitoring required by Article 6 was carried out in those regions, nor that it was not compulsory. I therefore conclude that the complaint relating to the monitoring in those three regions is sufficiently clear and, as such, well founded.

65. The Commission and the Italian Government also differ on the problem of whether Member States may be regarded as being in compliance through carrying out the monitoring prescribed in the directives specified in Article 6(1)(a), (i) and (ii) of the Directive, the results of which must be notified to the Commission in accordance with Directive 91/692. I agree with the Commission in so far as it states that it is clear from Article 6 that the monitoring laid down in other directives cannot be considered sufficient for that purpose. The text of Article 6 cannot be interpreted in any other way. Moreover, that solution does not affect my observations at point 63.

66. On the basis of the above, I conclude that Italy, by failing to implement Article 6 of the Directive as regards the Regions of Abruzzi, Puglia and Calabria, has failed to fulfil its obligations under that article in conjunction with Annex IV, while, as to the remainder, with regard to Article 6, the application must be dismissed.

15 — Case C-96/95 *Commission* v *Germany* [1997] ECR I-1653, paragraph 24.

C — *Complaint relating to Article 10 of the Directive*

1. Arguments of the parties

67. Under Article 10 of the Directive Member States are obliged to submit a report every four years. The first report, covering the first four years, had to be sent to the Commission by 20 June 1996. The report must contain all the information outlined in Annex V. The Italian Government had not sent any report before that date.

68. According to the Commission, the documentation produced by the Italian Government with its response to the formal notice, in its letter dated 16 July 1997, was incomplete and insufficient in its content.

69. The report sent on 18 September 1998 also did not satisfy the terms of the Directive. The Commission found four faults:

— the report is geographically incomplete;

— there is no detailed map of the (possible) polluted waters and vulnerable zones, as required under point 2 of Annex V;

— for almost half of the regions there is no indication of the monitoring results for nitrate concentrations;

— the overview given of the action programmes is unsatisfactory. It merely provides an account of some measures and only for some regions. There is no systematic report on the matters specified under point 4 of Annex V.

70. The Commission therefore concludes that Italy failed to fulfil its obligation to prepare within the period a report that complies with the requirements of the Directive.

71. However, the Italian Government is of the view that the report contains a summary of the cases of pollution by nitrates found and the measures adopted. It adds that the relatively brief nature of the report does not conflict with the requirements of Annex V.

2. Assessment

72. In my view, first of all, it is not in dispute between the parties that the Italian Government sent a report to the Commission which was late, that is after 20 June 1996. That alone, in my view, is already a breach of Article 10 of the Directive. To this the following may be added. By letter of 18 September 1998 — and therefore well after the expiry of the period laid down in the Directive — Italy sent a report to the Commission. Annex V to the Directive indicates precisely the information to be contained in the report. The Commission specified in its application, with equal precision, what the missing information was. The Italian Government does not dispute that, but states in its defence, *inter alia*, that a general outline could be sufficient and that Article 10 and Annex V are not precise enough to justify, on that basis, a charge of failure to fulfil obligations. It should be clear that I do not agree with this argument.

73. Consequently, I find that, by providing the Commission with a late report, which was also incomplete and unsatisfactory, the Italian Government has failed to fulfil its obligations under Article 10 of the Directive in conjunction with Annex V thereto.

VI — Costs

74. It is clear from the foregoing that the Commission's complaints are almost all well founded. Only on one, limited, point do I suggest that the application be dismissed. In those circumstances, it is in my opinion reasonable that Italy should be ordered to pay all the costs.

VII — Conclusion

75. In the light of all the facts and the circumstances set out above, I propose that the Court should:

(a) Dismiss the application in so far it alleges non-compliance with Article 6 of Directive 91/676/EEC with respect to the protection of waters against

pollution by nitrates from agricultural sources in the Regions of Liguria, Lombardy, Veneto, Marche and Campania, and also of Piedmont, Umbria, Lazio, Molise, Sicily, and in the Provinces of Trento and Bolzano;

(b) As to the remainder, declare that the Italian Republic:

— by failing to adopt the measures necessary to implement Articles 5, 6 and 10 of Directive 91/676,

— or in any case, by failing to inform the Commission of those measures,

has failed to fulfil its obligations under that directive;

(c) Order Italy to pay the costs, in accordance with Article 69(2) of the Rules of Procedure.