

Case C-293/97

The Queen
v
Secretary of State for the Environment,
Minister of Agriculture, Fisheries and Food,
ex parte: H. A. Standley and Others

(Reference for a preliminary ruling
from the High Court of Justice of England and Wales,
Queen's Bench Division)

(Directive 91/676/EEC — Protection of waters against pollution caused by nitrates from agricultural sources — Identification of waters affected by pollution — Designation of vulnerable zones — Criteria — Validity in the light of the polluter pays principle, the principle that environmental damage should as a priority be rectified at source, the principle of proportionality and the right to property)

Opinion of Advocate General Léger delivered on 8 October 1998 I - 2606
Judgment of the Court (Fifth Chamber), 29 April 1999 I - 2626

Summary of the Judgment

1. *Environment — Protection of waters against pollution caused by nitrates from agricultural sources — Directive 91/676 — Identification of 'waters affected by pollution' — Designation of 'vulnerable zones' — Criteria — Whether application of the directive may vary according to the Member State — Permissible*
(Council Directive 91/676, Arts 2(f) and 3(1) and (2) and Annex I)

2. *Environment — Protection of waters against pollution caused by nitrates from agricultural sources — Directive 91/676 — Identification of 'waters affected by pollution' — Principle of proportionality — Polluter pays principle and principle that environmental damage should as a priority be rectified at source — Right to property — Whether infringed — No such infringement*

(Council Directive 91/676, Arts 3(1) and 5(3), (6) and (7) and Annex III)

1. Articles 2(j) and 3(1) of Council Directive 91/676 concerning the protection of waters against pollution caused by nitrates from agricultural sources and Annex I thereto must be interpreted as requiring the identification of surface freshwaters as 'waters affected by pollution', and therefore the designation as 'vulnerable zones' in accordance with Article 3(2) of that directive of all known areas of land which drain into those waters and contribute to their pollution, where those waters contain a concentration of nitrates in excess of 50 mg/l and the Member State concerned considers that the discharge of nitrogen compounds from agricultural sources makes a 'significant contribution' to that overall concentration of nitrates.

essarily accepted that consequence when, in Annex I to the directive, it granted the Member States a wide discretion in the identification of waters covered by Article 3(1).

2. The fact that the concentration of nitrates of agricultural origin in waters identified as 'waters affected by pollution' under Article 3(1) of Directive 91/676 concerning the protection of waters against pollution caused by nitrates from agricultural sources may, in itself, not exceed 50 mg/l does not infringe the principle of proportionality, the polluter pays principle, the principle that environmental damage should as a priority be rectified at source or the fundamental right to property of the farmers concerned.

Since, however, Community law cannot provide precise criteria for establishing in each case whether the discharge of nitrogen compounds of agricultural origin makes a significant contribution to the pollution, the directive may be applied by the Member States in different ways. Nevertheless, such a consequence is not incompatible with the nature of the directive, since it does not seek to harmonise the relevant national laws but to create the instruments needed in order to ensure that waters in the Community are protected against pollution caused by nitrates from agricultural sources. The Community legislature nec-

The flexibility of the measures, provided for in Article 5(3), (6) and (7) of the directive and Annex III thereto, concerning action programmes applicable to vulnerable zones, suitable monitoring programmes to assess the effectiveness of those programmes and codes of good agricultural practice enables the Member States to observe the principle of proportionality.

As regards the polluter pays principle, the directive does not mean that farmers must take on burdens for the elimination of pollution to which they have not contributed, because the Member States are to take account of the other sources of pollution when implementing the directive and, having regard to the circumstances, are not to impose on farmers costs of eliminating pollution that are unnecessary. Viewed in that light, the polluter pays principle reflects the principle of proportionality. The same applies to the principle that environmental damage should as a priority be rectified at source.

Finally, while it is true that the action programmes which are provided for in Article 5 of the directive and are to contain the mandatory measures referred to in Annex III impose certain conditions on the spreading of fertiliser and livestock manure, so that those programmes are liable to restrict the exercise by the farmers concerned of the right to property, the system laid down in Article 5 reflects requirements relating to the protection of public health, and thus pursues an objective of general interest without the substance of the right to property being impaired. While the institutions and the Member States are bound by the principle of proportionality when pursuing such an objective, the directive does not offend against that principle.