

JUDGMENT OF THE COURT (Fifth Chamber)  
29 April 1999 \*

In Case C-293/97,

REFERENCE to the Court under Article 177 of the EC Treaty by the High Court of Justice of England and Wales, Queen's Bench Division, for a preliminary ruling in the proceedings pending before that court between

**The Queen**

and

**Secretary of State for the Environment,**

**Minister of Agriculture, Fisheries and Food,**

***ex parte*: H. A. Standley and Others and D. G. D. Metson and Others,**

\* Language of the case: English.

**Intervener: National Farmers' Union,**

on the interpretation and validity 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 COURT (Fifth Chamber),**

composed of: P. Jann, President of the First Chamber, acting for the President of the Fifth Chamber, J. C. Moitinho de Almeida (Rapporteur), C. Gulmann, D. A. O. Edward and L. Sevón, Judges,

Advocate General: P. Léger,  
Registrar: L. Hewlett, Administrator,

after considering the written observations submitted on behalf of:

- Messrs Standley and Others and Metson and Others, by David Vaughan QC and Peter Cranfield and Maurice Sheridan, Barristers, instructed by Richard Barker, Solicitor,
  
- the National Farmers' Union, by Stuart Isaacs QC and Clive Lewis, Barrister, instructed by Sally Stanyer, Solicitor,

- the United Kingdom Government, by Stephanie Ridley, of the Treasury Solicitor's Department, acting as Agent, Stephen Richards QC and Jon Turner, Barrister,

the French Government, by Kareen Rispal-Bellanger, Head of the Subdirectorate for International Economic Law and Community Law in the Legal Affairs Directorate of the Ministry of Foreign Affairs, and Romain Nadal, Assistant Secretary for Foreign Affairs in the same directorate, acting as Agents,

- the Swedish Government, by Lotty Nordling, Rättschef in the Legal Secretariat (EU) of the Ministry of Foreign Affairs, acting as Agent,

- the Council of the European Union, by Guus Houttuin, of its Legal Service, acting as Agent,

- the Commission of the European Communities, by Richard B. Wainwright, Principal Legal Adviser, acting as Agent,

having regard to the Report for the Hearing,

after hearing the oral observations of Messrs Standley and Others and Metson and Others, represented by David Vaughan, Peter Cranfield and Maurice Sheridan; the National Farmers' Union, represented by Stuart Isaacs and Clive Lewis; the United Kingdom Government, represented by Stephanie Ridley, Kenneth Parker QC and

Jon Turner; the Council, represented by Guus Houttuin; and the Commission, represented by Richard B. Wainwright, at the hearing on 18 June 1998,

after hearing the Opinion of the Advocate General at the sitting on 8 October 1998,

gives the following

### Judgment

- 1 By order of 17 June 1997, received at the Court on 11 August 1997, the High Court of Justice of England and Wales, Queen's Bench Division, referred to the Court for a preliminary ruling under Article 177 of the EC Treaty two questions on the interpretation and validity 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').
  
- 2 Those questions were raised in two actions brought by Messrs Standley and Others and Metson and Others for the annulment of decisions by which the Secretary of State for the Environment and the Minister of Agriculture, Fisheries and Food identified the Rivers Waveney, Blackwater and Chelmer and their tributaries as waters which could be affected by pollution within the meaning of Article 3(1) of the Directive and designated the areas of land draining into those waters as vulnerable zones within the meaning of Article 3(2) thereof.

## The Directive

3 Article 1 of the Directive states:

‘This Directive has the objective of:

- reducing water pollution caused or induced by nitrates from agricultural sources and
- preventing further such pollution.’

4 Article 2(j) states:

‘For the purpose of this Directive:

...

- (j) “pollution”: means 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’.

5 Article 3 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.

...

4. Member States shall review [and] if necessary revise or add to the designation of vulnerable zones as appropriate, and at [least] every four years, to take into account changes and factors unforeseen at the time of the previous designation. They shall notify the Commission of any revision or addition to the designations within six months.

5. Member States shall be exempt from the obligation to identify specific vulnerable zones, if they establish and apply action programmes referred to in Article 5 in accordance with this Directive throughout their national territory.'

6 Article 4 provides for the establishment of one or more codes of good agricultural practice, which are to be implemented by farmers on a voluntary basis and should contain provisions covering at least the items mentioned in paragraph A of Annex II.

7 Article 5 states:

‘1. 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.

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;

...

6. Member States shall draw up and implement suitable monitoring programmes to assess the effectiveness of action programmes established pursuant to this Article.

Member States which apply Article 5 throughout their national territory shall monitor the nitrate content of waters (surface waters and groundwater) at selected measuring points which make it possible to establish the extent of nitrate pollution in the waters from agricultural sources.

7. Member States shall review and if necessary revise their action programmes, including any additional measures taken pursuant to paragraph 5, at least every four years. They shall inform the Commission of any changes to the action programmes.'

8 For the purpose of designating and revising the designation of vulnerable zones, Article 6 of the Directive lays down a procedure for the monitoring of water quality under which the reference methods set out in Annex IV to the Directive are used to measure the concentrations of nitrates and nitrogen compounds.

9 In Annex I, which relates to the criteria for identifying the waters referred to in Article 3(1), paragraph A.1 provides:

‘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.’

10 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) is 50 mg/l.

#### National law

11 It appears from the order for reference that the Protection of Water against Agricultural Pollution (England and Wales) Regulations of 21 March 1996 (S. I. 1996 No 888; ‘the Regulations’) were adopted under the European Communities Act 1972 in order to give effect to the obligations arising under the Directive.

12 The designation by ministerial decision of the area of the River Waveney and of the area of the Rivers Blackwater and Chelmer as nitrate vulnerable zones was implemented by Annex 1 to the Regulations. The national court makes it clear that there are no intermediate provisions of national law for it to construe.

- 13 It is also apparent from the order for reference that, as stated in the affidavit sworn on 16 September 1996 by Paul Bristow, Head of the Water Quality Division at the Department of the Environment, 'the Government's approach to the designation of vulnerable zones was to identify tightly defined catchments of polluted waters, rather than always to designate catchments of entire surface water systems which had been found to be polluted at the surface water abstraction point. As a first step bodies of water were identified on this basis which were either heavily polluted or showed the clear potential to be heavily polluted by nitrates. Secondly, the known areas of land draining into those waters (and not any areas of land draining into the rivers upstream of those waters) were identified. Thirdly, having regard in particular to the land use and other characteristics of the areas of land and the bodies of water in question, an assessment was made as to whether agricultural sources were making a significant contribution to the levels of pollution detected.'

### **The main proceedings**

- 14 The applicants in the main proceedings, supported by the National Farmers' Union ('the NFU'), have sought annulment of the decisions by which the respondents identified surface waters comprising the Rivers Waveney, Blackwater and Chelmer and their tributaries as waters which could be affected by nitrate pollution and designated the areas of land draining into those rivers as nitrate vulnerable zones.
- 15 According to the applicants in the main proceedings, the establishment, in those areas where they own or farm land, of action programmes restricting agricultural use, as required by the Regulations under which the nitrate vulnerable zones have been designated, would cause them immediate and long-term economic harm in terms of land values and of income from their farming businesses.

- 16 In their view, Article 3(1) of the Directive requires the Member States to identify surface freshwaters as waters which are or could be affected by pollution only if they exceed, or could exceed if relevant action were not taken, the threshold for nitrates of 50 mg/l by reason of the direct or indirect discharge of nitrogen compounds from agricultural sources. The Member States must therefore establish the source of the nitrates which cause that threshold to be exceeded.
- 17 They plead in the alternative that, if the interpretation contended for by the respondents in the main proceedings were correct, the Directive would infringe the polluter pays principle, the principle that environmental damage should as a priority be rectified at source, the principle of proportionality and the fundamental right to property.
- 18 According to the respondents, it follows from Article 2(j) of the Directive and paragraph A.1 of Annex I that the term 'waters affected by pollution' in Article 3(1) refers to surface freshwaters used for drinking water supplies that have a nitrate content in excess of 50 mg/l to which nitrates from agricultural sources make a significant contribution. They state that no provision of the Directive or its annexes contains even an implied obligation on the Member States to assess the concentration of nitrates attributable solely to agricultural sources of pollution when establishing whether the threshold of 50 mg/l is exceeded. The limit of 50 mg/l represents the overall concentration of nitrates, of whatever origin, in drinking water supplies above which hazards to human health arise. Moreover, it is impossible to determine accurately whether the nitrates of agricultural origin present in surface waters exceed 50 mg/l.
- 19 In reply to the applicants' alternative plea, the respondents point out that the measures provided for by the action programme are to take account of the quantities of nitrogen originating from agricultural and from other sources.

20 The High Court of Justice of England and Wales, Queen's Bench Division, having regard to those submissions, considered that the actions brought by the applicants in the main proceedings raised matters of general interest relevant to all farmers affected by the interpretation of the Directive and its implementation by national authorities. It therefore decided to stay proceedings and refer the following questions to the Court for a preliminary ruling:

1. Does Council Directive 91/676/EEC of 12 December 1991 concerning the protection of waters against pollution caused by nitrates from agricultural sources ("the Nitrates Directive") require Member States, in accordance, in particular, with Articles 2(j) and 3(1) and Annex I thereof, to identify surface freshwaters as "waters affected by pollution", and then to designate as vulnerable zones in accordance with Article 3(2) thereof all known areas of land which drain into such waters and which contribute to pollution:

- (i) where those waters contain a concentration of nitrates in excess of 50 mg/l (being the concentration of nitrates laid down by Annex I to the Nitrates Directive, by reference to Directive 75/440/EEC) and the Member State is satisfied that the discharge of nitrogen compounds from agricultural sources makes a "significant contribution" to this overall concentration of nitrates and, if so, is a Member State entitled to be so satisfied if it has reason to believe that the contribution to this overall concentration of nitrates, of nitrogen compounds discharged from agricultural sources, is greater than *de minimis* or some other amount or degree of contribution, and if the latter, what amount or degree of contribution amounts to a "significant contribution" for these purposes; or
- (ii) only where the discharge of nitrogen compounds from agricultural sources itself accounts for a concentration of nitrates in those waters in excess of 50 mg/l (i. e. leaving out of account any contribution from other sources); or
- (iii) on some other basis and, if so, what basis?

2. If Question 1 is answered otherwise than in sense (ii) above, is the Nitrates Directive invalid (to the extent of its application to surface freshwaters) on the grounds that it infringes:
- (i) the principle that the polluter should pay; and/or
  - (ii) the principle of proportionality; and/or
  - (iii) the fundamental property rights of those owning and/or farming land draining into surface freshwaters required to be identified under Article 3(1), being areas of land which are then designated by Member States as vulnerable zones under Article 3(2)?'

### Question 1

- <sup>21</sup> By its first question, the national court is essentially asking whether Articles 2(j) and 3(1) of the Directive 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 the 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.

- 22 Should that question be answered in the affirmative, the national court asks what quantity of nitrates or degree of contribution to the pollution constitutes a 'significant contribution'.
- 23 The applicants in the main proceedings, supported by the NFU, maintain that surface freshwaters are to be identified as affected by pollution only where agricultural sources alone account for a concentration of nitrates in those waters in excess of 50 mg/l, the limit laid down in Directive 75/440.
- 24 That assertion, they submit, is reinforced, first, by the fact that the objective of the Directive is to protect waters from pollution due to nitrates from agricultural sources (second, third, fifth, sixth, ninth and tenth recitals in the preamble to the Directive and Article 1 thereof).
- 25 Second, the definition of the term 'pollution' set out in Article 2(j) of the Directive is expressly limited to the discharge of nitrogen compounds from agricultural sources, so that when the Member States identify waters affected by pollution under Article 3(1) of the Directive that term has an identical meaning, namely the discharge of nitrogen compounds which are exclusively agricultural in origin.
- 26 Third, the applicants in the main proceedings contend that when the Member States apply Article 3(1) of the Directive they are to assess whether the maximum concentration of nitrates in water could be exceeded if action pursuant to Article 5 is not taken. Since such action is concerned solely with agricultural practices, the 50 mg/l limit can apply only to nitrates from agricultural sources.

- 27 Fourth, while the Member States may, in accordance with Article 3(5) of the Directive, establish and apply action programmes throughout their territory without designating specific vulnerable zones, a possibility which has not been taken up in this case, that does not exempt them from the obligation to determine the extent of water pollution caused by nitrates from agricultural sources.
- 28 Finally, as regards the 'significance' of the contribution made by agricultural sources to the level of nitrates in the waters concerned, the applicants in the main proceedings state that that concept is imprecise and does not appear anywhere in the Directive. An interpretation under which the Member States may decide the level beyond which such a contribution is significant would be contrary to the principle of legal certainty and would not be justified by the impossibility of measuring the various sources of nitrates with a sufficient degree of accuracy.
- 29 In that regard, it should be observed that, when the Member States identify waters affected by pollution in accordance with Article 3(1) of the Directive, they are to apply the criteria laid down in Annex I. Under paragraph A.1 of that annex, surface freshwaters, in particular those used or intended for the abstraction of drinking water, must be identified as waters affected by pollution when they contain, or could contain if action pursuant to Article 5 of the Directive is not taken, more than the concentration of nitrates laid down in Directive 75/440.
- 30 It does not follow from the wording of that provision that the Member States are required to determine precisely what proportion of the pollution in the waters is attributable to nitrates of agricultural origin or that the cause of such pollution must be exclusively agricultural.

31 As is clear from the scheme of the Directive, the identification of waters within the meaning of Article 3(1) forms part of a process which also encompasses the designation of vulnerable zones and the establishment of action programmes. It would thus be incompatible with the Directive to restrict the identification of waters affected by pollution to cases where agricultural sources alone give rise to a concentration of nitrates in excess of 50 mg/l when, within the framework of that process, the Directive expressly provides that, in establishing the action programmes under Article 5, the respective nitrogen contributions originating from agricultural and other sources are to be taken into account.

32 Similarly, Article 3(5) of the Directive allows the Member States to designate the whole of their territory as a nitrate vulnerable zone instead of identifying waters affected by pollution, which means that they may establish action programmes even if the pollution caused by nitrates of exclusively agricultural origin does not exceed the threshold of 50 mg/l.

33 Finally, the interpretation put forward by the applicants in the main proceedings would lead to exclusion from the scope of the Directive of numerous cases where agricultural sources make a significant contribution to the pollution, a result which would be contrary to the Directive's spirit and purpose.

34 The fact that the level for the concentration of nitrates taken into account when identifying waters was set by reference to that laid down in Directive 75/440 shows that requirements of public health protection determined the maximum concentration of nitrates, of whatever origin, permissible in water intended for human consumption, nitrate pollution being harmful to human health irrespective of whether it has been caused by agricultural or by industrial sources.

- 35 The question whether the Directive applies only where the discharge of nitrogen compounds of agricultural origin makes a significant contribution to the pollution must be answered in the affirmative, given the objective of the Community legislature, namely to reduce and prevent water pollution caused or induced by nitrates from agricultural sources, and the scope of the measures envisaged for that purpose by Article 5.
- 36 However, the Directive does not preclude the Member States, if their national law so allows, from applying the provisions of the Directive in cases not covered by it.
- 37 When national courts review the legality of measures identifying waters affected by pollution in accordance with Article 3(1) of the Directive, as interpreted in this judgment, they must take account of the wide discretion enjoyed by the Member States which is inherent in the complexity of the assessments required of them in that context.
- 38 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.
- 39 The Directive may thus 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 necessarily 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).

- 40 The answer to the first question must therefore be that Articles 2(j) and 3(1) of the Directive 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 the 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.

## Question 2

- 41 By its second question, the national court asks whether the fact that the concentration of nitrates of agricultural origin in waters identified under Article 3(1) of the Directive may, in itself, not exceed 50 mg/l infringes the principle of proportionality, the polluter pays principle and the fundamental right to property of the farmers concerned, thereby rendering the Directive invalid.

- 42 The applicants in the main proceedings argue, first, that the identification of waters which exceed that threshold because of the presence of nitrates of non-agricultural origin (Article 3(1) of the Directive), the designation as vulnerable zones of agricultural land which drains into those waters even though that land accounts for only part of the concentration of nitrates (Article 3(2)) and the establishment of an action programme which imposes on farmers alone responsibility for ensuring that the threshold is not exceeded (Article 5) give rise to disproportionate obligations on the part of the persons concerned, so that the Directive offends against the principle of proportionality.
- 43 Second, they submit that the Directive infringes the polluter pays principle laid down in Article 130r(2) of the EC Treaty, on the ground that farmers alone bear the cost of reducing the concentration of nitrates in waters to below the threshold of 50 mg/l even though agriculture is acknowledged to be only one of the sources of those nitrates, while the other sources escape all financial burden.
- 44 Third, they maintain that the Directive is contrary to the principle under which environmental damage should as a priority be rectified at source, a principle which is to be read in conjunction with the polluter pays principle, as is clear from Article 130r(2) of the EC Treaty. Contrary to the first of those principles, the consequence of the interpretation placed on the Directive by the respondents in the main proceedings is that, instead of the nitrate pollution of waters from atmospheric deposition, which originates principally from industry and transport, being prevented or reduced at source, farmers are required to bear the entire burden of preventing or reducing nitrate pollution of surface freshwaters.

45 Finally, they submit that the right to property is infringed by imposing on farmers the entire responsibility for, and economic burden of, reducing nitrate concentrations in the waters concerned when others are the major or substantial causes of those concentrations.

46 So far as concerns the principle of proportionality, it should be observed first that, under Article 5(3) of the Directive, the action programmes applicable to vulnerable zones are to take account of available scientific and technical data with reference to the respective nitrogen quantities originating from agricultural and other sources and of environmental conditions in the relevant regions.

47 Next, the mandatory measures adopted under those programmes must take into account the characteristics of the vulnerable zone concerned (paragraph 1(3) of Annex III) and the Member States may fix amounts of livestock manure which may be spread in the vulnerable zones that differ from those specified if they are justified on the basis of objective criteria and do not prejudice the attainment of the Directive's objectives (paragraph 2(b) of Annex III).

48 Also, the Member States are required to draw up and implement suitable monitoring programmes to assess the effectiveness of the action programmes (Article 5(6) of the Directive) and they are to review and, if necessary, revise their action programmes at least every four years (Article 5(7)). They can thus take account of changes of circumstance in relation to pollution from both agricultural and other sources.

- 49 Finally, the codes of good agricultural practice adopted by the Member States under Article 4(1)(a) of the Directive are to take account of conditions in the different regions of the Community (paragraph A of Annex II).
- 50 It follows that the Directive contains flexible provisions enabling the Member States to observe the principle of proportionality in the application of the measures which they adopt. It is for the national courts to ensure that that principle is observed.
- 51 As regards the polluter pays principle, suffice it to state that the Directive does not mean that farmers must take on burdens for the elimination of pollution to which they have not contributed.
- 52 As has been pointed out in paragraphs 46 and 48 of this judgment, 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 on which the Court has already expressed its view (paragraphs 46 to 50 of this judgment).
- 53 The same applies to breach of the principle that environmental damage should as a priority be rectified at source, since the arguments of the applicants in the main proceedings are indissociable from their arguments relating to breach of the principle of proportionality.

54 As regards infringement of the right to property, the Court has consistently held that, while the right to property forms part of the general principles of Community law, it is not an absolute right and must be viewed in relation to its social function. Consequently, its exercise may be restricted, provided that those restrictions in fact correspond to objectives of general interest pursued by the Community and do not constitute a disproportionate and intolerable interference, impairing the very substance of the rights guaranteed (Case 44/79 *Hauer v Land Rheinland-Pfalz* [1979] ECR 3727, paragraph 23, Case 265/87 *Schröder v Hauptzollamt Gronau* [1989] ECR 2237, paragraph 15, and Case C-280/93 *Germany v Council* [1994] ECR I-4973, paragraph 78).

55 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.

56 However, 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.

57 While the institutions and the Member States are bound by the principle of proportionality when pursuing such an objective, the Directive does not, as has been found in paragraphs 46 to 50 of this judgment, offend against that principle.

- 58 Accordingly, it must be concluded that consideration of the questions raised has disclosed no factor of such a kind as to affect the validity of the Directive.

### Costs

- 59 The costs incurred by the United Kingdom, French and Swedish Governments and by the Council and the Commission, which have submitted observations to the Court, are not recoverable. Since these proceedings are, for the parties to the main proceedings, a step in the actions pending before the national court, the decision on costs is a matter for that court.

On those grounds,

THE COURT (Fifth Chamber),

in answer to the questions referred to it by the High Court of Justice of England and Wales, Queen's Bench Division, by order of 17 June 1997, hereby rules:

1. Articles 2(j) and 3(1) of Council Directive 91/676/EEC of 12 December 1991 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.

2. Consideration of the questions raised has disclosed no factor of such a kind as to affect the validity of Directive 91/676.

Jann

Moitinho de Almeida

Gulmann

Edward

Sevón

Delivered in open court in Luxembourg on 29 April 1999.

R. Grass

J.-P. Puissochet

Registrar

President of the Fifth Chamber