

JUDGMENT OF THE COURT

14 July 1993 <sup>\*</sup>

In Case C-56/90,

**Commission of the European Communities**, represented by Ricardo Gosalbo Bono and Xavier Lewis, members of its Legal Service, acting as Agents, with an address for service in Luxembourg at the office of Nicola Annecchino, a member of its Legal Service, Wagner Centre, Kirchberg,

applicant,

v

**United Kingdom of Great Britain and Northern Ireland**, represented by John E. Collins, Assistant Treasury Solicitor, acting as Agent, assisted by John Laws and Derrick Wyatt, Barristers, with an address for service in Luxembourg at the Embassy of the United Kingdom, 14 Boulevard Roosevelt,

defendant,

APPLICATION for a declaration that, by failing to take all the necessary measures to ensure that the quality of bathing water in the bathing areas in Blackpool and adjacent to Formby and Southport conforms to the limit values set in accordance with Article 3 of Council Directive 76/160/EEC of 8 December 1975 concerning the quality of bathing water (OJ 1976 L 31, p. 1), the United Kingdom has failed to fulfil its obligations under Article 4 of that directive and under Articles 5 and 189 of the EEC Treaty,

<sup>\*</sup> Language of the case: English.

THE COURT,

composed of: O. Due, President, C. N. Kakouris and M. Zuleeg (Presidents of Chambers), R. Joliet, J. C. Moitinho de Almeida, F. Grévisse, M. Diez de Velasco, P. J. G. Kapteyn and D. A. O. Edward, Judges,

Advocate General: C. O. Lenz,  
Registrar: H. von Holstein, Deputy Registrar,

having regard to the Report for the Hearing,

after hearing oral argument from the parties at the hearing on 27 October 1992 at which the United Kingdom was represented by John E. Collins, assisted by Derrick Wyatt and by Stephen Richards, Barrister,

after hearing the Opinion of the Advocate General at the sitting on 16 December 1992,

gives the following

**Judgment**

- 1 By application lodged at the Court Registry on 7 March 1990, the Commission of the European Communities brought an action under Article 169 of the EEC Treaty for a declaration that, by failing to take all the necessary measures to ensure that the quality of bathing water in the bathing areas in Blackpool and adjacent to Formby and Southport conforms to the limit values set in accordance with Article 3 of Council Directive 76/160/EEC of 8 December 1975 concerning the quality of bathing water (OJ 1976 L 31, p. 1, hereinafter 'the directive'), the United Kingdom has failed to fulfil its obligations under Article 4 of the directive and under Articles 5 and 189 of the EEC Treaty.

2 According to Article 1(1), the directive concerns the quality of bathing water, with the exception of water intended for therapeutic purposes and water used in swimming pools.

3 Paragraph 2(a) and (b) of that article provides that for the purposes of the directive:

‘(a) “bathing water” means all running or still fresh waters or parts thereof and sea water, in which:

— bathing is explicitly authorized by the competent authorities of each Member State, or

— bathing is not prohibited and is traditionally practised by a large number of bathers;

(b) “bathing area” means any place where bathing water is found.’

4 The directive requires Member States to set the values applicable to bathing water for the physical, chemical and microbiological parameters indicated in the annex thereto; those values may not be less stringent than those given in column I of the annex (Articles 2 and 3).

5 Under Article 4(1) of the directive, the quality of bathing water must conform to the limit values set in accordance with Article 3 of the directive within a period of ten years following notification of the directive to the Member State concerned; in the United Kingdom’s case, that period expired on 31 December 1985. However, with regard to bathing areas specially equipped for bathing created by the competent national authorities after the notification of the directive, the values laid down

in the annex must be observed from the time when bathing is first permitted, special provision being made for bathing areas created during the two years following notification (Article 4(2)).

- 6 Under Article 5(1) of the directive, bathing water is deemed, for the purposes of Article 4, to conform to the abovementioned parameters, if samples taken in the manner provided for in the annex and at the same sampling point show that it conforms to the parametric values for the quality of the water concerned in the case of a specified percentage of samples.
- 7 Article 12(1) of the directive requires Member States to bring into force the laws, regulations and administrative provisions necessary to comply with the directive within two years of its notification. In the United Kingdom's case, that period expired on 31 December 1977.
- 8 Finally, derogations from the obligations under the directive are allowed by certain provisions:
  - Article 4(3) permits Member States, in exceptional circumstances, to grant derogations in respect of the ten-year period for ensuring that bathing water conforms to the parameters indicated in the annex. The justification for such a derogation must be based on plans for the management of water within the area concerned and be communicated to the Commission not later than six years following the notification of the directive.
  - Under Article 5(2), deviations from the values referred to in Article 3 are not taken into consideration in the calculation of the percentages of the samples which must conform to those values when they are the result of floods, other natural disasters or abnormal weather conditions.

- Article 8 allows derogations in the case of certain of the parameters mentioned in the annex on account of exceptional weather or geographical conditions or when bathing water undergoes natural enrichment in certain substances causing a deviation from the values prescribed in the annex. A Member State waiving the provisions of the directive is forthwith to notify the Commission thereof, stating its reasons and the periods anticipated.
- 9 During the course of the written procedure before the Court, the Commission withdrew its complaint concerning the bathing area situated at Formby Point.
- 10 Reference is made to the Report for the Hearing for a fuller account of the facts of the case, the procedure and the pleas and arguments of the parties, which are mentioned or discussed hereinafter only in so far as is necessary for the reasoning of the Court.

### Admissibility

- 11 The United Kingdom says that on 19 October 1979 it advised the Commission of the precise criteria which were essential for the identification of bathing waters falling within the scope of the directive. The communication in question was sent to the competent authorities on 9 July 1979 in order to implement the directive in England and Wales. On the basis of that communication, which included *inter alia* detailed guidance on what constituted a large number of bathers within the meaning of the second indent of Article 1(2)(a) of the directive, 27 areas were identified as falling within the scope of the directive and were notified to the Commission by a letter of 18 December 1979. The United Kingdom emphasized that the list, which did not include the waters in issue, was not definitive since several local authorities had not had the opportunity to submit their observations, and that further information would, if appropriate, be sent to the Commission at the beginning of the following year.
- 12 On 18 July 1980 the Commission addressed to the United Kingdom a reasoned opinion concerning an alleged failure to implement the directive in Northern

Ireland and Scotland. The United Kingdom replied to the Commission by letter of 18 September 1980, pointing out that in those parts of the United Kingdom no stretch of water came within the criteria laid down and that, as far as the list of bathing waters situated in England and Wales was concerned, no changes or additions had been found to be necessary.

- 13 The United Kingdom maintains that, since the Commission raised no objection following that reply, it was entitled to take the view that the Commission was satisfied with the manner in which the directive was being implemented. By raising objections only much later concerning the exclusion of the bathing waters at issue from the scope of the directive, the Commission created a situation of legal uncertainty and infringed Article 5 of the Treaty, which imposes on it a duty of cooperation with the Member States. Accordingly, this application, it maintains, should be declared inadmissible.
- 14 That argument cannot be upheld.
- 15 The United Kingdom was not entitled to draw from the Commission's initial inaction the inference that the Commission approved the criteria notified and the manner in which they had been applied. Neither Article 5 of the Treaty nor the provisions of the directive obliged the Commission to express a view within a given period on the manner in which the United Kingdom was implementing Article 1 of the directive. The Commission was therefore entitled to formulate its objections at such time as it deemed appropriate, and there was nothing to prevent it from subsequently instituting these proceedings under Article 169 of the EEC Treaty.
- 16 The United Kingdom raises a second plea of inadmissibility to the effect that it was physically impossible for it to adopt the measures necessary to ensure that the quality of the waters at issue complied with the requirements of the directive within the period of two months laid down in the reasoned opinions of 2 February 1988.

- 17 That argument cannot be upheld either.
- 18 According to the case-law of the Court (see the judgment in Case 293/85 *Commission v Belgium* [1988] ECR 305, paragraph 14), in determining whether the period allowed in the reasoned opinion is reasonable, account must be taken of all the circumstances of the case.
- 19 Suffice it to observe that the Commission drew the United Kingdom's attention to the situation concerning the bathing waters in Blackpool and adjacent to Formby and Southport by letters of 3 April and 30 July 1986 respectively, that is to say almost two years prior to the date of the reasoned opinion. In those circumstances the contested period must be regarded as reasonable. Moreover, the United Kingdom could in any event have prohibited bathing in the areas in question. As the Commission observed at the hearing, other Member States took such action in respect of certain of the waters whose quality was not in conformity with the directive.
- 20 Finally, the United Kingdom submits that the application is inadmissible on the ground that the directive does not impose an obligation to achieve a result but merely requires the Member States to take all necessary steps in order to comply with the obligations laid down by it.
- 21 This argument goes to the substance of the case. Its relevance must therefore be examined when the merits of the application are considered.
- 22 It follows from all the foregoing considerations that the application is admissible.

## Substance

### *The waters at Ainsdale*

- 23 The United Kingdom contests the allegation concerning the quality of the waters at Ainsdale, a locality situated between Southport and Formby Point.
- 24 In that connection the Commission claims that the United Kingdom had admitted, in a letter of 6 June 1988 in reply to the reasoned opinions of 2 February 1988, that an improvement in the quality of the waters at Ainsdale was necessary in order to attain the parameters laid down in the directive and that, consequently, it had acknowledged that those parameters were not being observed.
- 25 That argument must be rejected.
- 26 The Commission did not challenge the results of the samples to which the United Kingdom referred in its defence as proof that the quality of the waters at Ainsdale had improved and complied with the requirements of the directive.
- 27 The Commission having therefore failed to establish any infringement concerning the waters at Ainsdale, the application must be dismissed as far as those waters are concerned.

### *The waters at Blackpool and those adjacent to Southport*

- 28 The United Kingdom does not deny that the quality of the bathing water in Blackpool and adjacent to Southport is still not in conformity with the directive. However, it submits that no failure to fulfil its obligations can be imputed to it. In the first place, neither the ten-year period laid down in Article 4(1) of the directive for ensuring that the quality of the water complies with the requirements of the directive, nor the six-year period provided for in Article 4(3) for notifying derogations



granted in respect of the ten-year period, have expired as far as those waters are concerned. Further, failure to comply with the six-year period under Article 4(3), even if established, could not prevent the United Kingdom from granting derogations under that provision. Finally, the United Kingdom claims that the directive does not impose an obligation to achieve a result but merely requires the Member States to take all necessary steps, as the United Kingdom has done, to comply with the standards prescribed.

*The time-limits laid down in Article 4(1) and (3) of the directive*

- 29 The United Kingdom contends that the definition of bathing water in the second indent of Article 1(2)(a) of the directive is too imprecise to enable the Member States to identify the waters falling within its scope; consequently, that term requires further elucidation, which entails a certain discretionary power on the part of the Member States.
- 30 The United Kingdom maintains that in exercise of that power it laid down the criteria contained in the communication of 19 October 1979 and drew up, pursuant thereto, a list of bathing waters falling within the scope of the directive. It subsequently proved necessary to review those criteria by having regard not only to the number of bathers but also to certain facilities in the bathing areas, such as toilets, changing huts, car parking areas, and to the presence of lifeguards.
- 31 According to the United Kingdom, in 1985 350 stretches of bathing water meeting those criteria were identified, to which other waters were added later. The waters at issue come within the new criteria and are therefore amongst the bathing waters identified in that manner.
- 32 For reasons of legal certainty Article 4(1) and (3) of the directive should, in its view, be interpreted as meaning that, in the case of bathing waters identified under

the new criteria, both the ten-year period for ensuring that the bathing waters conform to the limit values indicated in the annex to the directive and the six-year period for notifying derogations from the aforementioned ten-year period begin to run from the moment when the waters are identified as bathing waters within the meaning of the directive and not from the date of notification of the directive.

- 33 In that connection it should be recalled that, according to the second indent of Article 1(2)(a) of the directive, 'bathing water' means all running or still fresh waters, or parts thereof, and sea water in which bathing is not prohibited and is traditionally practised by a large number of bathers. That expression must be interpreted in the light of the directive's underlying purpose as set out in the first two recitals in the preamble thereto, which state that, 'in order to protect the environment and public health, it is necessary to reduce the pollution of bathing water and to protect such water against further deterioration' and that 'surveillance of bathing water is necessary in order to attain, within the framework of the operation of the common market, the Community's objectives as regards the improvement of living conditions, the harmonious development of economic activities throughout the Community and continuous and balanced expansion.'
- 34 Those objectives would not be attained if the waters of bathing resorts equipped with facilities such as changing huts, toilets, markers indicating bathing areas, and supervised by lifeguards, could be excluded from the scope of the directive solely because the number of bathers was below a certain threshold. Such facilities and the presence of lifeguards constitute evidence that the bathing area is frequented by a large number of bathers whose health must be protected.
- 35 The bathing areas of Blackpool and of Southport have for a long time been bathing resorts meeting the criteria mentioned above. Accordingly, as from the notification of the directive they should have been considered bathing areas within the meaning of the directive.

- 36 It follows that the United Kingdom cannot place reliance on the communication of 19 October 1979, or on the list of bathing waters drawn up during the course of 1979 pursuant to the criteria set out in that communication, in order to justify a failure to observe the time-limits laid down in Article 4(1) and (3) of the directive, in the case of the waters at issue. As is borne out by the very wording of those provisions, those time-limits begin to run from the date of notification of the directive.
- 37 As far as the argument based on legal uncertainty is concerned, suffice it to note that, as stated at paragraph 15 above, the United Kingdom was not entitled to infer from the absence of any objection on the part of the Commission to those criteria, or to the list drawn up, that the Commission regarded them as satisfying the requirements of the directive.

*The consequences of failure to observe the time-limit laid down in Article 4(3)*

- 38 The United Kingdom further contends that it would in any event be contrary to the principle of proportionality to consider that the failure by a Member State to comply with the time-limit laid down in Article 4(3) of the directive deprives it of the right to grant derogations in respect of the ten-year period provided for in Article 4(1). That is particularly so since such an interpretation would place a Member State without any ground for derogation on the same footing as a Member State whose derogation was justified but had not been notified in time.
- 39 As to that, suffice it to say that the period in question is intended to ensure that as far as possible bathing waters are, notwithstanding the derogation, brought into conformity with the directive within the ten-year period mentioned in Article 4(1) by means, in particular, of the initiatives which may be taken by the Commission under Article 4(3). That objective would be jeopardized, however, if the interpretation advocated by the United Kingdom were to be accepted.

*The nature of the obligations imposed by the directive*

- 40 According to the United Kingdom, the directive merely requires the Member States to take all practicable steps to comply with the limit values set in accordance with Article 3 of the directive. In the United Kingdom, the necessary studies in this connection have been carried out and works are in hand which will enable the bathing waters at issue to be brought into conformity with the directive in 1995. Such works are necessarily slow, in particular because their impact on the population and the life of the town must be kept to the minimum possible. The United Kingdom adds that the Commission did not indicate to it what steps might enable it to ensure that the directive is implemented more swiftly with regard to the waters at issue.
- 41 That argument cannot be upheld.
- 42 It is clear from Article 4(1) of the directive that the Member States are to take all necessary measures to ensure that, within 10 years following the notification of the directive, bathing water conforms to the limit values set in accordance with Article 3. This period is longer than that laid down for the implementation of the directive, namely two years from the date of notification (Article 12(1)), in order to enable the Member States to comply with the aforementioned requirement.
- 43 The only derogations from the obligation incumbent upon Member States to bring their bathing waters into conformity with the requirements of the directive are those provided for in Articles 4(3), 5(2) and 8, whose provisions are summarized above. It follows that the directive requires the Member States to take steps to ensure that certain results are attained, and, apart from those derogations, they cannot rely on particular circumstances to justify a failure to fulfil that obligation.
- 44 Consequently, the United Kingdom's argument that it took all practicable steps cannot afford a further ground, in addition to the derogations expressly permitted,

justifying the failure to fulfil the obligation to bring the waters at issue into conformity at least with the annex to the directive.

- 45 The United Kingdom observes that, if the latter interpretation were to prevail, any deviation from the limit values laid down in the annex to the directive would constitute an infringement of Article 4(1) of the directive, even if the Member State concerned had taken all practicable steps to avoid such deviations.
- 46 Even assuming that absolute physical impossibility to carry out the obligations imposed by the directive may justify failure to fulfil them, the United Kingdom has not, as the Advocate General pointed out at paragraph 56 of his Opinion, succeeded in establishing the existence of such impossibility in this case.
- 47 It follows, in view of all the foregoing considerations, that, by failing to take all the necessary measures to ensure that the quality of the bathing waters of Blackpool and of those adjacent to Southport conforms to the limit values set in accordance with Article 3 of Council Directive 76/160/EEC of 8 December 1975, the United Kingdom has failed to fulfil its obligations under the EEC Treaty.

### Costs

- 48 Under Article 69(2) of the Rules of Procedure, the unsuccessful party is to be ordered to pay the costs if they have been applied for in the successful party's pleadings. Since the United Kingdom has in the main been unsuccessful in its pleas, it must be ordered to pay the costs.

On those grounds,

THE COURT

hereby:

1. Declares that, by failing to take all the necessary measures to ensure that the quality of the bathing waters in Blackpool and of those adjacent to Southport conforms to the limit values set in accordance with Article 3 of Council Directive 76/160/EEC of 8 December 1975 concerning the quality of bathing water, the United Kingdom has failed to fulfil its obligations under the EEC Treaty;
2. Dismisses the remainder of the application;
3. Orders the United Kingdom to pay the costs.

Due	Kakouris	Zuleeg	Joliet	
Moitinho de Almeida	Grévisse	Diez de Velasco	Kapteyn	Edward

Delivered in open court in Luxembourg on 14 July 1993.

J.-G. Giraud

Registrar

O. Due

President