OPINION OF ADVOCATE GENERAL TESAURO
delivered on 30 April 1996 *

1. In these proceedings, the Parliament seeks the annulment of Council Directive 94/43/EC of 27 July 1994 establishing Annex VI to Directive 91/414/EEC concerning the placing of plant protection products on the market. [1] The Parliament claims that that directive was adopted in breach of its prerogatives, since the Council modified the obligations imposed on the Member States by other directives even though amendment of the latter would have required recourse to a legislative procedure which includes consultation of the Parliament. It also, in any event, claims that the directive breaches the obligation to state the reasons on which a measure is based, laid down by Article 190 of the Treaty.

2. For a better understanding of the arguments put forward by the parties, it is first necessary to describe the purpose and content of the relevant Community legislation, in particular the contested directive.

The Community legislation

3. Council Directive 91/414/EEC of 15 July 1991 concerning the placing of plant protection products on the market [2] (hereinafter 'the basic directive'), adopted on the basis of Article 43 of the Treaty, lays down the rules applicable to the Member States concerning the authorization, marketing, use and control of plant protection products. Pursuant to Article 4(1) of that directive, the Member States are to grant authorization for a plant protection product only if certain conditions are fulfilled — a particular requirement is that:

'(a) its active substances are listed in Annex I and any conditions laid down therein are fulfilled, and, with regard to the following points (b), (c), (d) and (e), pursuant to the uniform principles provided for in Annex VI, unless:

(b) it is established in the light of current scientific and technical knowledge and

* Original language: Italian.

1 — OJ 1994 L 227, p. 31.

2 — OJ 1991 L 230, p. 1.

shown from appraisal of the dossier provided for in Annex III, that when used in accordance with Article 3(3), and having regard to all normal conditions under which it may be used, and to the consequences of its use:

(...)

(iv) it has no harmful effect on human or animal health, directly or indirectly (e.g. through drinking water, food or feed) or on groundwater;

(v) it has no unacceptable influence on the environment, having particular regard to the following considerations:

— its fate and distribution in the environment, particularly contamination of water, including drinking water and groundwater,

— its impact on non-target species;

(...)'.

The same Article 4 also provides, so far as is relevant here, that the authorization must lay down at least the requirements necessary to ensure compliance with the provisions of paragraph 1(b) (Article 4(2)); and that the Member States are to ensure that compliance with those requirements is established by official or officially recognized tests and analyses carried out under appropriate agricultural, plant-health and environmental conditions (Article 4(3)). The authorizations, granted for a specified period not exceeding ten years, may be reviewed at any time if it is found that the requirements of paragraph 1 are no longer satisfied (Article 4(5) and (6)).

Articles 5 and 6 go on to define the conditions under which active substances may be listed in Annex I, which is specifically concerned with 'active substances authorized for incorporation in plant protection products'. Article 10(1) lays down the principle of mutual recognition of the authorizations granted by the Member States, and the applicable procedures. Finally, Article 18 provides

that 'The Council, acting by a qualified majority on a proposal from the Commission, shall adopt the 'uniform principles' referred to in Annex VI'.

4. Those uniform principles, which are necessary to guarantee that, in their decisions on plant protection products, the Member States apply the requirements of Article 4(1) of the basic directive uniformly, were laid down by Directive 94/43/EC, namely the directive which the Parliament wishes to be annulled.

For the present purposes, it is appropriate first of all to consider the wording of the last four recitals in the preamble to that directive:

'Whereas the provisions of this directive on the protection of water are without prejudice to Member States' obligations under the directives concerning the protection of water, and in particular Directives 75/440/EEC, 80/68/EEC and 80/778/EEC;

Whereas a review of the abovementioned directives is necessary and this should be carried out as soon as possible;

Whereas, pending such review, the provisions of this directive concerning the protection of water are transitional in nature;

Whereas it is important to evaluate the impact of the use of plant protection products on groundwater, but whereas the models currently available do not enable a precise estimate to be made of the foreseeable concentration in such water; whereas it is therefore necessary to re-examine the provisions of Part C, point 2.5.1.2(b) of Annex VI to Directive 91/414/EEC as soon as models validated at Community level enable such concentration to be estimated precisely.'

Then there are the provisions at issue in these proceedings, which are concerned, from the point of view of environmental impact, with groundwater. Those provisions are set out in Annex VI, both in part B, concerning evaluation of the information notified in support of applications for authorization (point B 2.5.1.2.), and in part C, which is concerned with decision-making (point C 2.5.1.2.).

Point B 2.5.1.2. states:

'Member States shall evaluate the possibility of the plant protection product reaching surface water under the proposed conditions of use; if this possibility exists they shall estimate, using a suitable calculation model validated at Community level, the short-term and long-term predicted concentration of the active substance and of metabolites, degradation and reaction products that could be expected in the surface water in the area of envisaged use after use of the plant protection product according to the proposed conditions of use.

If there is no validated Community calculation model, Member States shall base their evaluation especially on the results of mobility and persistence-in-soil studies and the information on run-off and drift as provided for in Annexes II and III.'

Point C 2.5.1.2. comprises four paragraphs, dealing respectively with: (a) the conditions to be met for an authorization to be granted; (b) the possibility of granting a conditional authorization for a limited period not exceeding five years; (c) the possibility of granting a further conditional authorization; and (d) the possibility of introducing at any time, having regard to the local situation, appropriate conditions or restrictions. In view of the importance of those paragraphs for the purposes of this case, I consider it necessary to reproduce them in full:

'(a) An authorization shall be granted only in the following cases:

(1) Where adequate monitoring data relevant to the proposed conditions of use of the plant protection product are not available and on the basis of the evaluation it appears that, after use of the plant protection product under the conditions proposed, the foreseeable concentration of the active substance or of relevant metabolites or breakdown or reaction products in groundwater intended for the production of drinking water does not exceed the lower of the following concentrations:

(i) the maximum admissible concentration laid down by Council Directive 80/778/EEC of 15 July 1980 relating to the quality of water intended for human consumption;

or

(ii) the maximum concentration laid down by the Commission when including the active substance in Annex I, on the basis of appropriate data, in particular toxicological data, or, where that concentration has not been laid down, the concentration corresponding to one-tenth of the ADI laid down when the active substance was included in Annex I;

(2) where adequate monitoring data relevant to the proposed conditions of use of the plant protection product are available and support the conclusion that in practice, after use of the plant protection product under the conditions proposed, the concentration of the active substance or of relevant metabolites or breakdown or reaction products in groundwater intended for the production of drinking water has not exceeded or no longer exceeds and is not in danger of exceeding the appropriate maximum concentration as referred to in (1) above.

(b) Irrespective of the provisions in (a) above, where the concentration referred to in (a)(1)(ii) is greater than that referred to in (a)(1)(i), a conditional authorization, which is not an authorization within the meaning of Article 10(1) of this directive and which is for a limited period of not more than five years, may be issued only in those cases in which the conditions specified in (1) or (2) below are fulfilled:

(1) where adequate monitoring data relevant to the proposed conditions of use of the plant protection product are not available, every conditional authorization issued shall be subject to the following requirements:

(i) it appearing on the basis of the evaluation that, after use of the plant protection product under the conditions proposed, the foreseeable concentration of the active substance of relevant metabolites or breakdown or reaction products in groundwater intended for the production of drinking water does not exceed the maximum concentration referred to in (a)(1)(ii) above; and

(ii) it being ensured that an adequate monitoring programme covering areas liable to be contaminated is introduced or continued in the Member State, using suitable methods of sampling and analysis, so that it can

be estimated whether the maximum concentration referred to in (a)(1)(i) above will be exceeded; it is for the Member States to decide who is to bear the cost of that monitoring programme;

(iii) where appropriate, attaching to the authorization of the conditions for or restrictions on the use of the product concerned, to appear on the label, having regard to agricultural plant health, and environmental (including climatic) conditions in the envisaged area of use;

(iv) if necessary, amendment or withdrawal of the conditional authorization, in accordance with Article 4(5) and (6), where monitoring results show that, despite the imposing of the conditions or restrictions referred to in (iii) above, after use of the plant protection product under the conditions proposed, the concentration of the active substance or of relevant metabolites or breakdown or reaction products in groundwater intended for the production of drinking water will exceed the concentration referred to in (a)(1)(i) above;

(2) where adequate monitoring data relevant to the conditions of use of the plant protection product are available and support the conclusion that in practice, after use of the plant protection product under the conditions proposed, there is no risk that the concentration of the active substance or of relevant metabolites or breakdown or reaction products in groundwater intended for the production of drinking water will exceed the maximum concentration referred to in (a)(1)(ii) above, every conditional authorization issued shall be subject to the following requirements:

(i) prior investigation of the significance of the risk of the maximum concentration referred to in (a)(1)(i) being exceeded and of the factors involved;

(ii) it being ensured that an adequate programme, consisting of measures referred to in (b)(1)(ii), (iii) and (iv) above, is introduced or continued in the Member State

so as to make sure that in practice the concentration does not exceed the maximum admissible concentration referred to in (a)(1)(i) above.

(c) If, upon expiry of the conditional authorization, monitoring results show that in practice the concentration of the active substance or of relevant metabolites or breakdown or reaction products, as a result of the use of the plant protection product under the proposed conditions of use, in groundwater intended for the production of drinking water has been reduced to a level approaching the maximum admissible concentration referred to in (a)(1)(i) above and if other amendments to the proposed conditions of use could be expected to ensure that the foreseeable concentration will be reduced below that maximum concentration, a further conditional authorization including those new amendments may be issued for a single period of not more than five years.

(d) A Member State may at any time introduce appropriate conditions for or restrictions on the product's use, having regard to local agricultural, plant-health and environmental (including climatic) conditions, in order to comply with the concentration referred to in (a)(1)(i) above in water intended for human consumption, in accordance with Directive 80/778/EEC.'

5. Also important to these proceedings are three Council directives concerning the quality and/or protection of water: (a) 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; [3] (b) Directive 80/68/EEC of 17 December 1979 on the protection of groundwater against pollution caused by certain dangerous substances; [4] and (c) Directive 80/778/EEC, referred to earlier, relating to the quality of water intended for human consumption. [5] All three directives have the same legal basis, namely Articles 100 and 235 of the Treaty.

(a) Directive 75/440/EEC concerns the requirements to be met, after appropriate treatment, by fresh surface water used or intended to be used for the production of drinking water. That directive, which does not apply to groundwater, brackish water and water intended to replenish water-bearing beds, defines as drinking water 'all surface water intended for human consumption and supplied by distribution networks for public use' (Article 1(2)).

(b) Directive 80/68/EEC, for its part, defines groundwater as 'all water which is below the surface of the ground in the saturation zone and in direct contact with the

3 — OJ 1975 L 194, p. 26.
4 — OJ 1980 L 20, p. 43.
5 — OJ 1980 L 229, p. 11.

ground or subsoil' (Article 1(2)(a)). That directive, which places dangerous substances in two separate lists, requires the Member States, first, to prevent the entry into groundwater of the dangerous substances in list I, and, secondly, to limit the entry of the substances in list II into the same water, in order to avoid pollution thereof (Article 3).

(c) Directive 80/778/EEC, which does not apply to mineral and medicinal waters, defines water intended for human consumption as 'all water used for that purpose, either in its original state or after treatment, regardless of origin, whether supplied for consumption or whether used in a food production undertaking ... and affecting the wholesomeness of the foodstuff in its finished form' (Article 2). The same directive provides, so far as is relevant here, that it is incumbent upon the Member States to determine, for the parameters in Annex I, the values applicable to water intended for human consumption; for some of those parameters, the values to be determined must be less than or the same as the values indicated for each of them in Annex I, in the 'maximum admissible concentration' column (Article 7). The Member States may provide for derogations from the directive in circumstances which it specifies (Articles 9 and 10).

Finally, the Member States are required to ensure that the application of the directive 'shall in no case have the effect of allowing, directly or indirectly, either any deterioration of the present quality of water intended for human consumption or any increase in the pollution of waters used for the production of drinking water' (Article 11); and to undertake periodical monitoring of all water intended for human consumption at the point where it is made available to the user in order to check whether it meets the requirements laid down by the directive (Article 12).

The Parliament's pleas in law

6. In support of its application for annulment, the Parliament relies on three pleas in law. Specifically, it maintains that, by adopting the contested measure, the Council: (a) modified, without following the legislative procedure involving consultation of the Parliament, the obligations imposed on the Member States by the basic directive; (b) modified, in the same way, the obligations imposed on the Member States by Directive 80/778/EEC; and (c) failed, thereby infringing Article 190 of the Treaty, to give reasons to justify the modification in question.

Essentially, the Parliament argues that its prerogatives have been encroached upon by the very fact that an implementing directive, the contested directive, modified the basic directive and Directive 80/778/EEC. Since

the first is based on Article 43 of the Treaty and the second on Articles 100 and 235, it considers that modification of them necessitated recourse to those same legal bases which — it hardly need be said again — require consultation of the Parliament.

Admissibility

7. The Council, although not raising a formal objection of inadmissibility, insists that the action is admissible only in so far as it seeks to protect the Parliament's prerogatives and is based only on the pleas relating to non-observance thereof.

It should first be noted, as has been made clear by the Court itself, that the conditions for the Parliament's *locus standi* for an action for annulment are met 'where the Parliament indicates in an appropriate manner the substance of the prerogative to be safeguarded and how that prerogative is allegedly infringed'. [6]

8. There is no doubt that the right to be consulted pursuant to a provision of the Treaty constitutes a prerogative of the Parliament, and therefore the first and second pleas in law clearly meet the prescribed conditions. The Parliament relies on them to show that the contested directive is in breach of certain provisions of basic directives for whose modification the prescribed legal basis was Treaty provisions which provide for it to be consulted.

9. In that connection, however, the plea as to breach of the obligation to state reasons is dubious in several respects. The Parliament claims essentially that an inadequate or incorrect statement of reasons for a measure whose adoption is liable to undermine its prerogatives constitutes — in itself — a separate breach of those prerogatives. In particular, it argues that the last four recitals in the preamble to the contested directive purport to show that its prerogatives have been fully respected, whereas that is not the case. From this the Parliament infers that a statement of reasons of that kind prevents it from exercising the right of review conferred on it by the Treaty.

In reply to that argument the Council contends that no breach of the obligation to state reasons laid down by Article 190 of the Treaty could in any circumstances be regarded as constituting, in itself, a breach of the Parliament's prerogatives. The Parliament cannot, in its view, invoke such a

6 — See, most recently, Case C-156/93 *Parliament* v *Commission* [1995] ECR I-2019, paragraph 10.

breach where the legal basis of a measure does not require its participation in the legislative process. In any event, it also submits that the contested directive contains a good eight recitals from which the reasons for its adoption are entirely clear.

10. It should be noted first of all that the Court declared an action by the Parliament inadmissible to the extent to which it was based on Article 190: it stated that 'in alleging that the contested provisions are inadequately reasoned for the purposes of that article, the Parliament has failed to indicate in an appropriate manner how that infringement, assuming that it has been committed, is such as to impair its own prerogatives'. [7]

Now, can the view that an inadequate or incorrect statement of reasons for a measure, the adoption of which could in theory impair the Parliament's prerogatives, constitutes a separate infringement be regarded as an appropriate indication of the way in which such a breach of the obligation to state reasons, assuming that it has occurred, is liable to encroach upon its prerogatives? Similarly, is such an indication to be perceived in the Parliament's claim that, having participated in the adoption of basic directives, it is entitled to verify that the contested directive complies with the provisions of the Treaty?

11. The answer to those questions can only be no. The Parliament's own arguments in fact show that a breach of the obligation to state reasons does not in itself constitute a breach of the Parliament's prerogatives. In particular, the purported right to verify that the contested directive complies with the provisions of the Treaty, even where the Parliament is not involved in the adoption thereof, cannot possibly be regarded as one of the Parliament's prerogatives. And indeed, to include among the Parliament's prerogatives the right to verify the proper implementation of Community law as part of the political review entrusted to it by the Treaty or by reason of its involvement in the legislative process for the adoption of other measures in the same sphere, would be tantamount to recognizing that it enjoyed an almost general entitlement to bring an action for annulment before the Court — and that is precluded both by the third paragraph of Article 173, as amended by the Maastricht Treaty, and by the relevant case-law. [8]

The foregoing observations prompt me to conclude that the plea as to breach of the

7 — *Parliament* v *Commission* (cited in footnote 6), paragraph 11.

8 — See, *inter alia*, Case C-316/91 *Parliament* v *Council* [1994] ECR I-625, paragraph 12; Case C-187/93 *Parliament* v *Council* [1994] ECR I-2857, paragraphs 14 and 15; and *Parliament* v *Commission*, cited above, paragraph 10.

obligation to state reasons laid down by Article 190 of the Treaty is inadmissible.

Substance

(a) *The plea concerning amendment of the basic directive*

12. As stated earlier, the Parliament claims that the contested directive, far from merely being a directive for implementation of the basic directive, in fact changed the latter's scope. Consequently, it should have been adopted not on the basis of Article 18(1) of the basic directive, [9] but rather by the procedure followed for adoption of the directive allegedly amended, namely on the basis of Article 43 of the Treaty.

In that connection, I would first point out that, according to settled case-law of the Court, 'the Council cannot be required to draw up all the details of the regulations concerning the Common Agricultural Policy according to the procedure laid down in Article 43 of the Treaty; it is sufficient for the purposes of that provision that the basic elements of the matter to be dealt with have been adopted in accordance with the procedure laid down by that provision; the provisions implementing the basic regulations may be adopted by the Council according to a procedure different from that laid down in Article 43 of the Treaty .... Nevertheless, an implementing regulation ..., adopted without consultation of the Parliament, must respect the essential elements laid down in the basic regulation after consultation of the Parliament'. [10] That means, in relation to this case, that it is necessary to verify whether the provisions of Annex VI at issue merely constitute arrangements for implementation of the basic directive or are such as to change the substantive principles thereof.

13. It is beyond doubt that, although Article 4(1)(b) of the basic directive requires the Member States, *inter alia*, to ensure that a plant protection product is not authorized unless 'it has no harmful effect ..., directly or indirectly ... on groundwater' and 'it has no unacceptable influence on the environment ... particularly contamination of water including drinking water and groundwater', the contested directive on the other hand (in points B 2.5.1.2. and C 2.5.1.2. of the annex)

9 — That provision specifically provides for the adoption by the Council, acting by a qualified majority on a proposal from the Commission, of the uniform principles referred to in Annex VI. This is therefore a case in which the Council used the possibility, provided for by Article 145 of the Treaty, to reserve the right to exercise powers to implement provisions adopted by it. I should point out that in the course of the proceedings the Parliament has nevertheless contended that, in so doing, the Council did not provide the requisite detailed statement of reasons, although this is required by the case-law of the Court of Justice (Case 16/88 *Commission* v *Council* [1989] ECR 3457, paragraph 10). However, that possible infringement, which moreover could hardly be regarded as liable to breach the Parliament's prerogatives, was not the subject of a specific criticism.

10 — See *inter alia* Case 46/86 *Romkes* v *Officier van Justitie* [1987] ECR 2671, paragraph 16, and *Parliament* v *Commission*, cited above, paragraph 18.

refers only to 'groundwater intended for the production of drinking water'. Those provisions of the annex, therefore, limit the type of groundwater concerned according to the effects of the plant protection products for which authorization is sought.

According to the Parliament, which considers that the provisions in question are liable to reduce the degree of protection of groundwater, as defined by Article 1 of Directive 68/80/EEC, the Council was required to lay down uniform principles in relation to all the requirements of Article 4(1)(b) of the basic directive and, thus, was also required to do so with respect to groundwater not intended for the production of drinking water. The Council could not, without doing so, have made an amendment of that kind to the basic directive unless it observed the procedure laid down in Article 43 of the Treaty.

14. For its part, the Council states that, by contrast with the requirements for surface water and groundwater intended for the production of drinking water, it did not consider it necessary to harmonize the criteria to be applied concerning effects on water not intended for that purpose. However, it rejects the view that the contested directive involves any decrease in the degree of protection of groundwater as defined in Article 1 of Directive 68/80/EEC, contending that protection of groundwater continues to be guaranteed by the last-mentioned directive, the requirements of which are not in fact undermined by the contested directive. The latter, therefore, did not reduce the level of protection for such water but in fact strengthened it, albeit only where it is intended for the production of drinking water.

The Council thus recognizes that the contested directive is not exhaustive with respect to Article 4(1)(b) of the basic directive, but considers that that fact alone cannot be regarded as rendering it unlawful. In particular, it contends that the legality of an implementing measure can be challenged only where it has gone beyond the limits set by the basic measure for the implementation of the principles laid down in it, and not in the opposite case, within which the contested directive falls. That view, it submits, is confirmed by the case-law of the Court of Justice, in particular a judgment of 23 February 1995. [11]

15. Let me say straight away that I do not share the Council's view. The possibility cannot be excluded that an implementing measure is unlawful solely because, far from

11 — Joined Cases C-4/94 and C-74/94 *Cacchiarelli and Stanghellini* [1995] ECR I-391, paragraph 14.

exceeding the bounds to which implementation of the principles in the basic measure were made subject, it confines itself to implementing certain principles and not others. It is clear that an implementing measure must conform with the essential elements of the basic measure and that even a lacuna in the implementing measures may constitute a breach of that requirement. That conclusion is not in any way affected by the judgment cited by the Council, which was delivered in an entirely different context and is wholly irrelevant to the present case. [12]

Nor do I understand the Council's assertion that protection of groundwater continues to be guaranteed by Directive 80/68/EEC and is thus not undermined by the contested directive, since the latter makes no change to the requirements imposed. I will merely point out that the issue here is not the compatibility of the contested directive with Directive 80/68/EEC but rather the failure to take account, in the contested directive, of protection of groundwater other than that intended for the production of drinking water, having regard to the effects of plant protection products on such water.

16. Bearing in mind that the basic directive expressly makes the issue of authorizations subject to verification of the effects which the products in question may have on *among other things* groundwater, I must conclude that the Parliament's criticism is well founded. It seems to me that, by failing to take account of all groundwater, the contested directive did not conform with the essential requirements involved in this case. In other words, in so far as protection of the environment — including groundwater — is one of the essential preconditions imposed by the directive for the issue of authorizations, the failure in question entails a substantial modification to the approach and the principles of the basic directive.

That conclusion is confirmed by the preamble to the directive, which states that 'the provisions governing authorization must ensure a high standard of protection, which, in particular, must prevent the authorization of plant protection products whose risks to health, *groundwater* and the environment have not been adequately investigated; [and that] the protection of human and animal health and protection of the environment should take priority over the objective of improving plant production'. [13]

12 — It may be true that the measures for implementation of the basic directive involved in that case — Council Directive 90/642/EEC of 27 November 1990 on the fixing of maximum levels for pesticide residues in and on certain products of plant origin, including fruit and vegetables (OJ 1990 L 350, p. 71) — do not cover all the pesticides capable of falling within the scope of the basic directive. In that case, however, in which, moreover, the legality of the implementing directive was certainly not an issue, the basic directive itself made clear in its preamble (see the tenth recital) that it was necessary to fix maximum quantities only for 'certain active substances', with the result that the alleged incompleteness of the annex adopted by the implementing directive, relied on by the Council to draw a parallel with this case, was perfectly in conformity with the basic directive.

13 — Ninth recital in the preamble to the directive. Emphasis added.

(b) *The plea concerning amendment of Directive 80/778/EEC*

17. In its second criticism, the Parliament claims that point C 2.5.1.2.(a) and (b), by allowing the Member States to issue a conditional authorization for a plant protection product whose foreseeable concentration in groundwater intended for the production of drinking water does not comply with the maximum concentration determined by Directive 80/778/EEC, breaches its prerogatives in two ways.

First, it submits that those provisions amend Article 4(1)(b) of the basic directive, in which the expressions 'harmful effect' and 'unacceptable influence' can only be interpreted in the light of the relevant applicable provisions, in particular those which fixed the maximum admissible concentration of pesticides in water intended for human consumption. Secondly, those provisions, it maintains, allow the Member States to authorize plant protection products under conditions contrary to the requirements of Directive 80/778/EEC, in particular by not requiring observance of the maximum admissible concentration fixed by that directive.

18. In its defence, the Council contends that the Parliament's view is based on a misinterpretation of the relationship between the contested directive and Directive 80/778/EEC. It states that the former is an implementing directive based on Article 18 of the basic directive, which is in turn based on Article 43 of the Treaty; it is, therefore, a directive pursuing common agricultural policy objectives and, accordingly, it lays down criteria which the Member States are required to observe when authorizing the marketing of plant protection products. The latter, on the other hand, is a harmonizing directive, based on Articles 100 and 235 of the Treaty, which lays down the conditions under which water may be used for human consumption and it thus pursues a different objective. In view of the different objectives of the directives in question, the Council concludes that the only consequence of the harmful effects of use of the plant protection products authorized is that the Member States are required to ensure that such water is not used for human consumption.

In short, the Council recognizes that application of the contested directive may have the effect of impairing the quality of water intended for human consumption, but contends that that possibility does not in any event give rise to any incompatibility between the two directives in question.

19. I consider that the Council's view is correct. Directive 80/778/EEC in fact lays down 'standards for water intended for human consumption' (Article 1). That means that

the Member States are required to ensure that water intended for human consumption satisfies the quality requirements which it lays down and therefore, in particular, to ensure observance of the 'maximum admissible concentration' of individual active substances, as laid down by that directive. Where that 'maximum admissible concentration' is not, or ceases to be, observed — either as a result of application of the contested directive or for other reasons — the only consequence will be that the water in question can no longer be regarded as intended for human consumption.

The Parliament objects that we could thereby find ourselves in a situation where all sources of water were declared no longer fit for human consumption, as a result of ceasing to meet the quality criteria laid down by the directive. Hoping with all my heart that such a catastrophic prediction will never come true, I would point out that Directive 80/778/EEC itself, in defining water intended for human consumption, refers to 'all water used for that purpose, either in its original state or *after treatment*'. [14] It must therefore be recognized that the directive itself, by allowing the Member States to treat water in order to make it fit for human consumption, makes it clear that the contested directive is not incompatible with it. There is no reason to change that conclusion, even if account is taken of Article 11 of Directive 80/778/EEC, by virtue of which the Member States are prohibited from 'allowing, directly or indirectly, ... any deterioration of the present quality of water intended for human consumption'. That provision is not relevant since, as it says, it concerns 'all necessary measures to apply the provisions taken pursuant to this directive'.

20. The fact that it is the Community legislation itself which allows the 'maximum admissible concentration' to be exceeded, besides being in itself deplorable, also leads me to conclude that the Parliament's criticism is well founded in relation to the other aspect to which it draws attention, that is to say in relation to Article 4(1)(b) of the basic directive. I do not see how it can be contended that the issue of authorizations for plant protection products whose use results in overstepping of the 'maximum admissible concentration' will not have a 'harmful effect on human or animal health, directly or indirectly (e.g. through drinking water, food or feed)'; or an 'unacceptable influence on the environment ... having particular regard to ... contamination of water, including drinking water and groundwater' (Article 4(1)(b)(iv) and (v) of the basic directive).

In short, I consider that the contested directive has modified the essential principles of

14 — Emphasis added.

the basic directive in that respect as well. The reasons for this are the same as those set out in connection with the first plea in law, that is to say because the approach underlying the basic directive is thereby altered and distorted.

21. In the light of the foregoing considerations, I suggest that the Court:

— annul Council Directive 94/43/EC of 27 July 1994 establishing Annex VI to Directive 91/414/EEC concerning the placing of plant protection products on the market;

— order the Council to pay the costs.