

OPINION OF ADVOCATE GENERAL

SHARPSTON

delivered on 18 May 2006¹

1. By this action the Commission asks the Court to declare that, by failing to adopt the measures necessary to comply with Directive 2000/60/EC of the European Parliament and of the Council establishing a framework for Community action in the field of water policy,² and, in any event, by failing to communicate them to the Commission, Luxembourg has failed to fulfil its obligations under that directive.³

3. Luxembourg on the contrary considers that a framework directive does not necessarily require the adoption of specific formal legislative, regulatory or administrative measures for its correct implementation in the domestic legal order. What matters is whether the material objectives sought by the directive are complied with in practice by the various deadlines that the directive specifies. In its defence before the Court, Luxembourg also argued for the first time that in any event its existing national legislation largely corresponded to the requirements of the directive.

The legal framework

2. Primarily, the Commission claims that proper implementation of Directive 2000/60 requires the adoption of a 'framework law' at national level. It is common ground that that has not happened. Alternatively, the Commission identifies (in its reply) a number of specific provisions of the directive which, it claims, Luxembourg has failed to implement.

EC Treaty

4. Pursuant to Article 249 EC a directive 'shall be binding, as to the result to be achieved, upon each Member State to which it is addressed, but shall leave to the national authorities the choice of form and methods'.

1 — Original language: English.

2 — Of 23 October 2000, OJ 2000 L 327, p. 1.

3 — The scope of the Commission's action was subsequently modified in the course of the proceedings. See points 32 to 34 and 37 below.

5. Article 174(1) EC confers on the Community powers to adopt a Community policy on the environment which is to contribute to the pursuit of the objectives of preserving, protecting and improving the quality of the environment, protecting human health, prudent and rational utilisation of natural resources and promoting measures at international level to deal with regional or worldwide environmental problems.

action. This Directive should provide for such a framework and coordinate and integrate, and, in a longer perspective, further develop the overall principles and structures for protection and sustainable use of water in the Community in accordance with the principle of subsidiarity.’

6. Article 175(1) EC provides that the Council, acting in accordance with the co-decision procedure referred to in Article 251 EC, is to decide what action is to be taken by the Community in order to achieve the objectives referred to in Article 174.

9. Article 1 provides that the purpose of the directive is the establishment of ‘a [Community] framework for the protection of inland surface waters, transitional waters, coastal waters and groundwater’.

Directive 2000/60

7. Directive 2000/60 was adopted on the basis of Article 175(1) EC.

8. Recital (9) of its preamble states that ‘it is necessary to develop an integrated Community policy on water’. Recital (18) explains that such a policy ‘requires a transparent, effective and coherent legislative framework. The Community should provide common principles and the overall framework for

10. Article 2 defines 41 relevant concepts for the purposes of the directive. Some concern the standards of water quality that Member States are obliged to achieve under the directive, in particular Article 4. By way of illustration, Article 2(22) defines ‘good ecological status’ as the status of a body of surface water classified as ‘good’ in accordance with Annex V of the directive. Article 2 (23) provides that ‘good ecological potential’ is the status of a heavily modified or an artificial body of water, classified in accordance with Annex V, which lays down the detailed conditions for analysing, classifying and monitoring the quality status of the bodies of waters referred to in the directive. Article 2(24) defines ‘good surface water chemical status’ as the chemical status required to meet the environmental object-

ives for surface waters established in Article 4(1)(a), that is to say, the chemical status of a body of surface water in which concentrations of pollutants do not exceed the environmental quality standards established under Annex IX, Article 16(7) and other relevant Community legislation setting environmental quality standards at Community level. Similarly, Article 2(25) provides that 'good groundwater chemical status' is the chemical status of a body of groundwater which meets all the conditions set out in table 2.3.2 of Annex V.

11. In so far as is relevant, Article 3 (entitled 'Coordination of administrative arrangements within river basin districts') provides:

'1. Member States shall identify the individual river basins lying within their national territory and, for the purposes of this Directive, shall assign them to individual river basin districts. ...

2. Member States shall ensure the appropriate administrative arrangements, including the identification of the appropriate competent authority, for the application of the rules of this Directive within each river basin district lying within their territory.

3. Member States shall ensure that a river basin covering the territory of more than one Member State is assigned to an international river basin district. At the request of the Member States involved, the Commission shall act to facilitate the assigning to such international river basin districts.

Each Member State shall ensure the appropriate administrative arrangements, including the identification of the appropriate competent authority, for the application of the rules of this Directive within the portion of any international river basin district lying within its territory.

4. Member States shall ensure that the requirements of this Directive for the achievement of the environmental objectives established under Article 4, and in particular all programmes of measures, are coordinated for the whole of the river basin district. For international river basin districts the Member States concerned shall together ensure this coordination and may, for this purpose, use existing structures stemming from international agreements. At the request of the Member States involved, the Commission shall act to facilitate the establishment of the programmes of measures.

...

6. Member States may identify an existing national or international body as competent authority for the purposes of this Directive.

7. Member States shall identify the competent authority by the date mentioned in Article 24.

8. Member States shall provide the Commission with a list of their competent authorities and of the competent authorities of all the international bodies in which they participate at the latest six months after the date mentioned in Article 24. For each competent authority the information set out in Annex I shall be provided.

9. Member States shall inform the Commission of any changes to the information provided according to paragraph 8 within three months of the change coming into effect.'

12. Article 4 lays down the environmental objectives which Member States are required to achieve when making operational the programmes of measures specified in the river basin management plans for surface waters, for groundwater and for protected areas. In essence, Member States are required to adopt the necessary measures to prevent environmental deterioration of targeted waters and protected areas, and to

enhance and restore them to the quality levels defined by the provisions of the directive, in particular Article 2. Article 4 also provides that, in general, the standards and objectives set by the directive must be achieved at the latest 15 years after its entry into force.

13. As regards waters used for the 'abstraction' of water for human consumption, Article 7(1) requires Member States to identify, within each river basin district, all the relevant bodies of water.

14. Article 7(2) provides that 'for each body of water identified under paragraph 1, in addition to meeting the objectives of Article 4 in accordance with the requirements of this Directive, for surface water bodies including the quality standards established at Community level under Article 16, Member States shall ensure that under the water treatment regime applied and, in accordance with Community legislation, the resulting water will meet the requirements of Directive 80/778/EEC as amended by Directive 98/83/EC'.

15. Article 7(3) requires Member States to ensure the necessary protection for the bodies of water identified under Article 7(1)

and gives them the possibility to establish, if they so wish, safeguard zones for those bodies of water.

(c) draft copies of the river basin management plan, at least one year before the beginning of the period to which the plan refers.

16. Article 14, entitled 'public information and consultation', provides as follows:

On request, access shall be given to background documents and information used for the development of the draft river basin management plan.

'1. Member States shall encourage the active involvement of all interested parties in the implementation of this Directive, in particular in the production, review and updating of the river basin management plans. Member States shall ensure that, for each river basin district, they publish and make available for comments to the public, including users:

2. Member States shall allow at least six months to comment in writing on those documents in order to allow active involvement and consultation.

(a) a timetable and work programme for the production of the plan, including a statement of the consultation measures to be taken, at least three years before the beginning of the period to which the plan refers;

3. Paragraphs 1 and 2 shall apply equally to updated river basin management plans.'

(b) an interim overview of the significant water management issues identified in the river basin, at least two years before the beginning of the period to which the plan refers;

17. Articles 16 and 17 of the directive are addressed to the Community institutions. Respectively, they require the European Parliament and the Council, acting on a proposal from the Commission, to adopt specific measures against pollution of water by individual pollutants or groups of pollutants and to prevent and control ground-water pollution. Under Article 18, the Commission is to publish a report on the

implementation of the directive at the latest 12 years after its entry into force and every six years thereafter.

National provisions

18. Article 23 provides: ‘Member States shall determine penalties applicable to breaches of the national provisions adopted pursuant to this Directive. The penalties thus provided for shall be effective, proportionate and dissuasive.’

19. Article 24 provides:

‘1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive at the latest [by] 22 December 2003. They shall forthwith inform the Commission thereof.

...

2. Member States shall communicate to the Commission the texts of the main provisions of national law which they adopt in the field governed by this Directive. The Commission shall inform the other Member States thereof.’

20. Luxembourg relies on the provisions of the Law of 29 July 1993 concerning the protection and management of surface and subterranean water, both public and private (‘the 1993 law’).⁴

21. Article 2 states that the purpose of the 1993 law is to combat water pollution and to ensure water regeneration with a view to meeting in particular the requirements arising from

- the protection of the health of humans and animals as well as the ecological balance;
- biological life of water receiving aquatic ecosystems and in particular fish life;
- the supply of water for human consumption and for industrial use;
- protection of water resources;

⁴ — Mém. 1993, 1302.

- bathing, aquatic sports and related leisure activities; **Background**

Pre-litigation procedure

- the protection of the landscape; and
- agriculture, industry, transport and all other human activity of general interest.

24. Considering that Luxembourg had not notified the measures adopted to implement Directive 2000/60 by the deadline (i.e., 22 December 2003) laid down in Article 24, by letter of 26 January 2004 the Commission invited Luxembourg to submit its observations under Article 226 EC.⁵

22. Article 3 defines 12 concepts for the purposes of the 1993 law.

23. Articles 18 and 19 concern the protection of the bodies of water intended for human consumption and the establishment of safeguard zones for those bodies of water. Article 18 defines different safeguard zones on the basis of their proximity to the source of water and the powers enjoyed by public authorities with respect to them. These include the power to nationalise the zones immediately adjacent to the source of drinkable water and the power to regulate any activity or use of the declared safeguard zones that may affect the quality of the water. Article 19 details the procedure for declaring safeguard zones, which includes a phase of public information and consultation.

25. By letter of 14 April 2004, Luxembourg replied that a draft law intended to implement Directive 2000/60 would be voted by the national Parliament at the end of 2004 or early in 2005. It also informed the Commission that a centralised administration for water management would be established by May 2004.

26. By letter of 9 July 2004, the Commission issued a laconic reasoned opinion under

⁵ — This letter was in general form, merely putting the Member State concerned on notice that the deadline for transposing a number of directives (listed in an annex from a computerised printout) had expired, indicating that there had been no notification of transposition measures, so that *prima facie* the Member State concerned was in breach of its obligations under those various directives, and inviting comments.

Article 226 EC inviting Luxembourg to adopt the necessary measures within two months.

and, in any event, by failing to notify them, Luxembourg had failed to fulfil its obligations under that directive.

27. Luxembourg replied on 27 September 2004. It indicated that it intended to take advantage of the need to transpose the ‘framework’ Directive 2000/60 into national law to undertake a ‘fundamental revision’ of its existing legislation governing water quality. It informed the Commission, *inter alia*, that the draft law for the implementation of the directive was in progress and that a new water management central administration had been established by the Law of 28 May 2004 and had been operational since the end of June 2004.

30. In its defence, Luxembourg raised, *inter alia*, two new grounds. First, it stated that it had duly informed the Commission, on 24 August 2004, of the name and address of the competent authority for each of the river basin districts of Luxembourg and had thereby complied with Article 3 of Directive 2000/60.

28. The Commission deemed that reply insufficient and lodged the present action.

31. Second, Luxembourg argued that existing national legislation, namely the 1993 law (here identified for the first time), granted its national authorities sufficient powers to ensure the attainment of the operational objectives of Directive 2000/60.

Proceedings before the Court

29. In its application the Commission claimed that by failing to adopt the laws, regulations and administrative provisions necessary to comply with Directive 2000/60

32. In its reply, the Commission acknowledged that it had not been aware, due to an absence of coordination between its own services, of the letter of 24 August 2004. It accepted that the measures notified in that letter amounted to proper implementation of Article 3 of Directive 2000/60.

33. The Commission also accepted that Article 7(3) of Directive 2000/60 was duly implemented by Articles 18 and 19 of the 1993 law.

its analysis by examining the compatibility of the 1993 law with provisions of Directive 2000/60 other than those it had identified in its reply in order to reach the same conclusion.

34. The Commission therefore adjusted the scope of its original application⁶ and reformulated the form of order sought in its reply. It asked the Court to declare that, by failing to adopt the laws, regulations and administrative provisions necessary to comply with Directive 2000/60, with the exception of Article 3(1), (2), (3), (5), (6) and (7) and Article 7(3) and, in any event, by failing to communicate them to the Commission, Luxembourg had failed to fulfil its obligations under that directive.

37. Following Luxembourg's oral submissions, the Commission accepted that Luxembourg was now in compliance with the substantive obligations arising from Article 7(1).

Assessment

35. The Commission maintained its primary argument that implementation of Directive 2000/60 by way of specific national framework legislation was required.

The ground concerning the failure to notify the implementation measures

36. The Commission also considered that the 1993 law did not constitute a full implementation of Directive 2000/60. By way of illustration, the Commission examined the 1993 law in the light of certain provisions of Directive 2000/60. At the hearing, the Commission sought to expand

38. It is best to deal with this ground first.

39. According to Article 24 of Directive 2000/60, Member States were required to inform the Commission of the measures adopted in order to implement the directive by 22 December 2003.

⁶ — And thus the formulation of its 'petitum'.

40. As the Court has consistently held, the question whether a Member State has failed to fulfil its obligations must be determined as at the end of the period laid down in the reasoned opinion,⁷ i.e. in the present case by 8 September 2004.

ive in its defence before the Court. The case-law cited above makes it clear that such a belated reference cannot cure the earlier failure to communicate the necessary information by the date laid down in the reasoned opinion.

41. It appears from the submissions to the Court that the sole information given by Luxembourg to the Commission within that time-frame was the letter of 24 August 2004. Luxembourg's formal response to the reasoned opinion was dated 27 September 2004.

44. The Commission's action is therefore founded in this respect.

42. The letter of 24 August 2004 was sent before the end of the two month period laid down by the Commission's reasoned opinion of 9 July 2004. The Commission has in any event accepted that it evidenced adequate implementation of the obligations arising under most subparagraphs of Article 3 of the directive. The Commission has as a result withdrawn its claim in respect of Luxembourg's failure to communicate the implementation measures adopted under Article 3 of Directive 2000/60. There is therefore no need to examine this aspect further.

The ground concerning the failure to adopt the necessary measures to implement Directive 2000/60

43. It is common ground that Luxembourg first suggested that the 1993 law constituted an appropriate implementation of the direct-

45. By way of preliminary observation, I should make it clear that the fact that the Commission introduced new arguments and altered the form of order sought in its reply does not affect the admissibility of the Commission's action in this case. As the Court has held in very similar circumstances, the Commission is entitled to clarify the form of order sought in order to take into account information furnished by a Member State in its defence;⁸ and it cannot therefore be reproached for dealing with the arguments based on the 1993 law for the first time in its reply.

⁷ — See, inter alia, Case C-113/03 *Commission v France*, judgment of 9 September 2004, not published, at paragraph 13 and the case-law cited therein.

⁸ — See Case C-456/03 *Commission v Italy* [2005] ECR I-5335, at paragraphs 33 and 34. See further points 66 to 70 below.

Arguments of the parties

46. The Commission's primary submission is that it follows from the objectives laid down in Article 1 that Directive 2000/60 requires Member States first to adopt a framework law to implement into the domestic legal order the main obligations arising from the directive. Such a framework law would then provide a satisfactory legal basis for adopting, as a subsequent step, the more specific measures required to attain the aims pursued by the other provisions of the directive. A framework law should therefore have been adopted and notified to the Commission by the deadline established in Article 24 of the directive.

47. The Commission's alternative position as set out in its reply is that the provisions of the 1993 law do not in any event fully implement Directive 2000/60. By way of illustration, the Commission claims that Articles 1, 2, 3(4) and 7(1) and 7(2) and 14 of the directive were inadequately transposed. At the hearing, the Commission sought to add Articles 4, 8, 11, 13 and 23 to that list.

48. For its part, Luxembourg accepts that adopting a framework law to implement Directive 2000/60 might be convenient for domestic purposes. However, it disagrees

fundamentally with the Commission's view that the directive imposes a specific legal obligation to adopt such a framework law. Directive 2000/60 does not constitute a harmonisation measure within the meaning of Article 95 EC. It is a directive which lays down a 'framework for a Community policy in the field of water management'.⁹ The main aim of Directive 2000/60 is not to oblige Member States to create an equivalent formal national legal framework through harmonisation of the national legal order, but to require them to adopt measures to attain certain material environmental objectives laid down in Article 4.

49. Luxembourg's response to the Commission's alternative argument is that the existing 1993 national law enables the national authorities to adopt all necessary measures to attain the operational objectives of Directive 2000/60 by the specified deadlines.

— Does correct implementation of Directive 2000/60 require the adoption of a framework law?

50. Directive 2000/60 is an unusual directive. It does not seek the harmonisation of

⁹ — Luxembourg refers to the title of Directive 2000/60 in its French version, which is slightly different from the English one. See point 1 above. The proposed translation is my own literal translation of the French version.

national laws. Rather, its overall objective is to establish a framework for Community action in the field of water policy. On closer examination, it becomes apparent that, in order to do so, the directive contains three different classes of provisions.

51. First, there are provisions which impose obligations on the Community institutions themselves. For instance, Articles 16 and 17 call on Community institutions to adopt Community measures in the fields of water and groundwater pollution.

52. Secondly, there are provisions imposing obligations on Member States vis-à-vis the Commission and the Community. Examples are the information obligations under Article 3(1) and Article 24(2).

53. Thirdly, there are provisions which appear to impose obligations on Member States with respect to individuals, with or without direct effect. Thus, for example, Article 4, which lays down the environmental objectives sought by the directive, requires Member States to implement the necessary measures to achieve these objectives. Article 14 obliges Member States to ensure the active involvement of all interested parties in the implementation of the directive.

54. In addition, different deadlines apply for the implementation of these various provisions.¹⁰

55. The fact that the directive's provisions are far from homogeneous must in turn have implications for the way in which those provisions can or should be implemented at national level (some, indeed, may not require implementation at all). As the Court has elsewhere recognised, 'Community legislative practice shows that there may be great differences in the types of obligations which directives impose on the Member States and therefore in the results which must be achieved. Thus, some directives require legislative measures to be adopted at national level and compliance with those measures to be the subject of judicial or administrative review. Other directives lay down that the Member States are to take the necessary measures to ensure that certain objectives formulated in general and unquantifiable terms are attained, whilst leaving them some discretion as to the nature of the measures to be taken. Yet other directives require the Member States to obtain very precise and specific results after a certain period. Accordingly, given that a failure to fulfil obligations can be found only if there is, on expiry of the period laid down in the reasoned opinion, a situation contrary to Community law which is objectively attributable to the Member State concerned, a

10 — See for instance Articles 4(1)(a)(ii) and (iii), (b)(ii), (c), 8(2), 10(2), 11(7) and (8), 13(6) and 16(4).

finding that the failure at issue has occurred depends on the type of obligations imposed by the provisions of [the directive] in question'.¹¹ Directive 2000/60 seems to contain samples of all the different types of provisions identified in that quotation.

56. The Court has likewise held that where a provision of a directive concerns only the relations between the Member States and the Commission, it does not, in principle, require implementation into the national legal order. In such circumstances, it is however open to the Commission to demonstrate that the adoption of a specific transposing measure is required.¹²

57. The Commission has insisted throughout the proceedings before the Court that, by virtue of the directive's objectives as stated in Article 1, Luxembourg should have adopted a 'framework law' in order correctly to implement the directive into national law. The Commission declined to identify, in answer to questions from several members of the Court at the hearing, which precise provision(s) of the directive imposed such a requirement or could be read as being capable of implementation only by that technique.

58. Article 249 EC indicates clearly that Member States may choose the form and methods for implementing directives which best ensure the result to be achieved by them. Subject of course to the principle of effectiveness, Member States are thus granted a large margin of discretion as to how they implement a directive.¹³

59. The Court has moreover repeatedly held that 'it is not always necessary formally to enact the requirements of a directive in a specific express legal provision, since the general legal context may be sufficient for implementation of a directive, depending on its content. In particular, the existence of general principles of constitutional or administrative law may render superfluous transposition by specific legislative or regulatory measures provided, however, that those principles actually ensure the full application of the directive by the national authorities and that, where the relevant provision of the directive seeks to create rights for individuals, the legal situation arising from those principles is sufficiently precise and clear and that the persons concerned are put in a position to know the full extent of their rights and, where appropriate, to be able to rely on them before the national courts.'¹⁴

11 — Case C-60/01 *Commission v France* [2002] ECR I-5679, at paragraphs 25 to 29.

12 — Case C-296/01 *Commission v France* [2003] ECR I-13909, at paragraph 92, and Case C-72/02 *Commission v Portugal* [2003] ECR I-6597, at paragraphs 19 and 20.

13 — See, inter alia, Case C-478/99 *Commission v Sweden* [2002] ECR I-4147, paragraph 15, and Case C-233/00 *Commission v France* [2003] ECR I-6625, paragraph 75.

14 — *Commission v Italy*, cited in footnote 8, at paragraph 51 and the case-law cited therein.

60. It is likewise settled case-law that, in proceedings under Article 226 EC, it is for the Commission to prove that the Member State has failed to fulfil its obligation, by placing the necessary information before the Court; and that in so doing the Commission may not rely on any presumption.¹⁵ In the present case, the Commission bears the burden of establishing that a framework law was the only means to implement Directive 2000/60 into national law effectively.

61. In my view the Commission has failed to discharge that burden. Whilst it has made general references to the objectives laid down in Article 1 and to the implementation measures adopted in other Member States, it has failed to put forward any convincing argument that Directive 2000/60 requires the adoption of a framework law at national level in order to be fully effective, to the exclusion of any other means of implementation.

62. Nor can such an obligation be derived from the wording of Directive 2000/60 in general or from Articles 1 and 24 thereof in particular. The Commission itself accepted at the hearing that Article 1 of the directive did not require implementation. As Luxembourg points out, Article 24 merely requires Member States to adopt the measures

‘necessary’ to give effect to the directive, be those measures legal, regulatory or administrative in nature. That provision cannot be construed as imposing a rigid requirement to adopt a framework law.

63. I add that, given the varied nature of the provisions in Directive 2000/60, it is unclear to me how or why a framework law at national level would constitute an appropriate means of transposing those provisions of Directive 2000/60 which impose obligations on the Community institutions themselves or concern relationships between Member States and the Commission.

64. Finally, I note that the Commission has accepted — at various stages of the proceedings before the Court — that (a) Luxembourg’s letter of 24 August 2004 evidenced proper implementation of most subparagraphs of Article 3, (b) Luxembourg has complied with Article 7(1),¹⁶ (c) Articles 18 and 19 of the 1993 law properly implement Article 7(3), and (d) Article 1 does not require to be transposed into national law (and the Commission has accordingly withdrawn the relevant parts of its original

¹⁵ — See, *inter alia*, Case C-194/01 *Commission v Austria* [2004] ECR I-4579, at paragraphs 34, and the case-law cited therein, and 74.

¹⁶ — See point 37 above.

application). Intellectually, it is difficult to reconcile this with the claim that 'only a framework law will do'.

65. I therefore conclude that the Commission has not made good its claim that a framework law at national level was required to implement Directive 2000/60.

— Compatibility of the 1993 law with Directive 2000/60

66. The Court must, nevertheless, also examine the Commission's alternative submissions as to whether or not the 1993 law correctly implements specific provisions of Directive 2000/60. I recall that, in a very similar recent case, the defendant Member State pleaded only in its defence before the Court that the directive there in question was already implemented by existing domestic law. The Court rejected the suggestion by the Commission that such a late reference to alleged implementing provisions could not cure the Member State's alleged failure to fulfil its obligation to implement the directive. Rather, the Court reasoned that 'in so far as the domestic legal provisions pleaded by the [respondent Member State] were in force

when the period set in the reasoned opinion expired, the Court must take them into account when determining whether that obligation has not been fulfilled'.¹⁷ Accordingly, in order to determine whether the failure to implement was established, the Court compared the provisions of the directive in question with the national measures by which the defendant Member State considered that it had implemented the directive.¹⁸

67. Likewise, in the present case only a comparison of the provisions of the 1993 law with the requirements of the directive will show whether Luxembourg has or has not complied with its obligation to implement Directive 2000/60.

68. That said, in my view the Court should limit its examination to those provisions of the directive identified by the Commission in its reply (namely Articles 1, 2, 3(4), 7(1)¹⁹ and (2) and 14) and should disregard the additional provisions of the directive invoked by the Commission at the hearing.

17 — *Commission v Italy*, cited in footnote 8 above, at paragraph 48 and the case-law cited therein. See also point 45 above.

18 — *Ibid.*, at paragraph 49.

19 — The plea regarding Article 7(1) was subsequently dropped at the hearing; see point 37 above.

69. That is because it is only in respect of the provisions identified in the reply that the Commission has, as required by the case-law,²⁰ provided sufficient information to enable the Court to establish whether or not the alleged failure to implement Directive 2000/60 is made out. Moreover, Luxembourg was not given due notice of, or an adequate opportunity to respond to, the Commission's claims in respect of the provisions of the directive invoked only at the hearing. For the Court to examine those claims would amount in my view to an infringement of Luxembourg's rights as a defendant and a failure to observe the underlying rationale of the Article 226 EC procedure.²¹

70. In its reply, the Commission had the opportunity to undertake a full examination of the extent to which the 1993 law did or did not implement the directive. It made only partial use of that opportunity.

71. Against that background, I turn to examine the compatibility of the 1993 law

with the obligations laid down by Articles 1, 2, 3(4), 7(2) and 14 of Directive 2000/60.

— Article 1

72. The Commission maintains that the general objectives laid down in Article 1 of Directive 2000/60 are wider than those pursued by the 1993 law, which are limited to fighting water pollution and regenerating water resources. However, in reply to a question from the Court at the hearing, the Commission accepted that Article 1 of Directive 2000/60 did not need to be implemented into national law. I therefore conclude that the Commission has dropped its claim in respect of Article 1. Should the Court nevertheless feel it necessary to examine the issue further, I would merely observe that the wording of Article 2 of the 1993 law, which describes its purpose, is (like Article 1 of Directive 2000/60) framed in quite general and unquantifiable terms.²² It could thus in principle accommodate all of the aims set out in Article 1 of Directive 2000/60.²³ The Commission's claim as regards Article 1 would therefore be unfounded in any event.

20 — See footnote 15 above.

21 — In my view this is not an instance where it can properly be said that the Commission, by invoking those additional articles of the directive at the hearing, is seeking to 'clarify' the form of order sought in order to take into account information furnished by a Member State in its defence. Nor does it represent the introduction of a new plea in law in the course of proceedings in order to take account of matters of law or of fact which came to light in the course of the procedure, as permitted by Article 42(2) of the Rules of Procedure.

22 — See point 21 above.

23 — In that sense, the reference in Article 2 of the 1993 law to the requirements arising from 'all other human activity in the general interest' is, it seems to me, all-embracing.

— Article 2

Member States — arguably (although the point does not need to be decided here) ones that may also grant rights to individuals — to be achieved within a particular time frame.

73. The Commission points out that the 1993 law contains only some of the definitions set out in Article 2 of Directive 2000/60. The Commission refers in particular to the notions of ‘river basin’, ‘good ecological potential’ and ‘good chemical state’, all of which are missing from the 1993 law.

74. Luxembourg does not suggest that the 1993 law includes those definitions. At the hearing, its defence appeared to be that the concepts defined in Article 2 are relevant only for the purposes of defining the content of the operational obligations that the directive imposes on Member States. Therefore, they do not per se need to be implemented.

75. I do not accept that proposition. Article 2 cannot be read in isolation. Some of the definitions in Article 2 lay down precise standards of water quality²⁴ that Member States must attain by the deadlines established, in particular, in Article 4 (as a general rule, 15 years after the entry into force of the directive).²⁵ Article 2, in conjunction with Article 4, thus imposes precise obligations on

76. The Court has repeatedly held that ‘mere administrative practices, which by their nature are alterable at will by the authorities and are not given the appropriate publicity, cannot be regarded as constituting the proper fulfilment of obligations under the Treaty’²⁶ and that ‘the provisions of a directive must be implemented with unquestionable binding force and with the specificity, precision and clarity required in order to satisfy the requirement of legal certainty, under which, in the case of a directive intended to confer rights on individuals, persons concerned must be enabled to ascertain the full extent of their rights’.²⁷

77. Contrary to the position advanced by Luxembourg, the deadlines for the attainment of the standards laid down in Article 4 are different from the general deadline in Article 24 for the adoption of the necessary measures to implement Directive 2000/60. By not including the definitions of the standards contained in Article 2 or the deadlines by which those standards are to be achieved as laid down in Article 4 (and thus by not rendering the obligations arising

24 — See point 10 above.

25 — See Articles 4(1)(a)(ii) and (iii), (b)(ii) and (c).

26 — Case C-197/96 *Commission v France* [1997] ECR I-1489, at paragraph 14 and the case-law cited therein.

27 — Case C-354/98 *Commission v France* [1999] ECR I-4927, at paragraph 11 and the case-law cited therein.

from Article 2 in connection with Article 4 binding on the competent national authorities), the 1993 law falls short of the requirements of Directive 2000/60.

ensure the coordination required by Directive 2000/60. Luxembourg has annexed to its rejoinder the texts of the Communiqué of the Conference of Ministers of the ICPR of 29 January 2001 and of the International Agreement concerning the Meuse of 3 December 2002 to support its claim. Both texts refer to the fact that the coordination measures required by Directive 2000/60 will be adopted within the framework of those international bodies.²⁸

— Article 3(4)

78. The Commission considers that no provision in the 1993 law properly implements Article 3(4) of Directive 2000/60, which requires Member States to coordinate all relevant measures for the whole of the river basin districts identified.

80. I agree with Luxembourg that the obligations arising from Article 3(4) vary according to whether the river basin district in question is national or international for the purposes of the directive. In the case of international river basin districts, Article 3(4) provides that ‘the Member States concerned shall together ensure this coordination and may, for this purpose, use existing structures stemming from international agreements’. Article 3(6) further provides that Member States may identify an existing national or international body as the competent authority for the purposes of the directive.

79. Luxembourg accepts that an obligation of coordination exists under Article 3(4). It argues, however, that there are no national river basins districts in Luxembourg. The only two river basin districts in the territory of Luxembourg for the purposes of Directive 2000/60 are international river basins districts, namely the Rhine and Moselle River basin district and the Meuse river basin district. An ad hoc Coordination Committee, in which all Member States concerned are represented, has been specially established within the International Commission for the Protection of the Rhine (ICPR) with the specific task of giving effect to the coordination obligation under Directive 2000/60. With respect to the Meuse, an International Commission for the Protection of the Meuse has been specifically created, inter alia to

81. The Commission has not challenged Luxembourg’s claim that the only two river basin districts in Luxembourg for the pur-

28 — As regards the ICPR, see page 13 of Luxembourg’s rejoinder (in Annex 1) and Articles 1, 2 and 5 of the International Agreement on the Meuse.

poses of the directive are international rather than national river basins districts.

achievement of specific standards of quality for bodies of water for human consumption.²⁹

82. From the documents annexed by Luxembourg to its rejoinder, it appears that two international bodies have indeed, as Luxembourg claims, been entrusted by all Member States concerned with the task of ensuring the coordination of the measures relating to the implementation of Directive 2000/60 as regards these international river basins districts. Thus, Luxembourg has, as a member of those international bodies, fulfilled its obligations under Article 3(4) of Directive 2000/60 as regards the international river basins districts in its territory.

83. Accordingly, I conclude that the Commission's claim fails in respect of Article 3(4).

85. Luxembourg has not put forward any defence on this point.

86. As with Article 2 read in conjunction with Article 4, Article 7(2) contains a clear and precise obligation which may (arguably) confer rights on individuals. Pursuant to the case-law cited above,³⁰ Luxembourg should have implemented that provision by means of measures having binding force in the national legal order by the deadline established in Article 24. Since the 1993 law contains no provision corresponding to Article 7(2) and no other measure of implementation has been adopted, Luxembourg has failed to fulfil its obligation to implement Article 7(2) of Directive 2000/60.

— Article 14

— Article 7(2)

84. According to the Commission no provision of the 1993 law implements, even partially, the obligations arising from Article 7(2), which imposes on Member States the

87. Finally, the Commission claims that the obligation to organise public information

29 — As regards the Commission's claims concerning Article 7(1) and (3), see also points 33 and 37 above.

30 — See footnote 27 above.

and consultation procedures intended to 'encourage the active involvement of all interested parties in the implementation of [the] directive, in particular in the production, review and updating of the river basin management plans' contained in Article 14 of Directive 2000/60 is not mirrored in the 1993 law.

88. Luxembourg does not suggest that the 1993 law contains a similar provision to Article 14 of the directive. It argues, however, that it follows from Article 14(1) read in conjunction with Article 13 of Directive 2000/60 that the deadline for complying with the obligations of public information under Article 14 has not yet expired.

89. Luxembourg is correct in stating that, pursuant to Article 13(6), river basin management plans must be published at the latest nine years after the date of entry into force of the directive; and that pursuant to Article 14(1) the public are to be informed and granted the opportunity to make comments, depending on the measures, between one and three years before the beginning of the period to which the plan refers. However, it is also clear that Article 14 seeks to confer on individuals and interested parties a right to be actively involved in the implementation of the directive, and 'in particular, in the production, review and updating of the river basin management plans'.

90. When individual rights are at stake, Member States must not only comply with the general obligations regarding the implementation of directives as laid down in the case-law cited above,³¹ but are also required to ensure that the legal situation at national level resulting from implementation is 'sufficiently precise and clear and that the persons concerned are put in a position to know the full extent of their rights and, where appropriate, to be able to rely on them before the national courts'.³²

91. I therefore consider that, in the present case, the national implementing measures had to be of such a nature as to render the deadline in Article 13(6) legally binding on the competent national authorities and enable individuals to ascertain the full extent of their rights under the procedures provided for in Article 14(1).

92. The absence of any implementation measure obviously does not meet those conditions. Contrary to what Luxembourg claims, the fact that the river basin management plans and the information procedures relating thereto are only to be published and discussed with the public at an undefined point in the future does not detract from the obligation of Member States to lay down a

³¹ — See footnotes 26 and 27 above.

³² — See, *inter alia*, *Commission v Italy*, cited in footnote 8 above, at paragraph 51 and the case-law cited therein.

precise, clear and legally binding measure ensuring compliance with those obligations. In the absence of any specific provision providing otherwise, the general deadline established under Article 24 was applicable.

Costs

93. I therefore conclude that by failing to adopt the necessary measures at national level to implement Article 14 of Directive 2000/60, Luxembourg has failed to fulfil its obligations under Directive 2000/60.

94. Pursuant to Article 69(3) of its Rules of Procedure, where each party succeeds on some heads and fails on others, the Court may order that the costs be shared. That is the case in the present proceedings, where the Commission has only been partially successful in its action. I therefore consider that each party should bear its own costs.

Conclusion

95. In view of the foregoing, I am of the opinion that the Court should:

(1) declare that

- by failing to communicate to the Commission the national laws, regulations and administrative provisions implementing Directive 2000/60/EC of the European Parliament and of the Council establishing a framework for

Community action in the field of water policy, with the exception of Article 3 thereof, Luxembourg has failed to fulfil its obligations under Article 24 of that directive;

- by failing to adopt, within the prescribed time period, the national laws, regulations and administrative provisions in order to comply with Articles 2, 7(2) and 14 of Directive 2000/60, Luxembourg has failed to fulfil its obligations under Article 24 of that directive;

(2) dismiss the remainder of the application;

(3) order each party to bear its own costs.