



Reports of Cases

JUDGMENT OF THE COURT (Second Chamber)

11 September 2014*

(Failure of a Member State to fulfil obligations — Environment — Directive 2000/60/EC — Framework for Community action in the field of water policy — Recovery of the costs for water services — Concept of ‘water services’)

In Case C-525/12,

ACTION for failure to fulfil obligations under Article 258 TFEU, brought on 19 November 2012,

European Commission, represented by E. Manhaeve and G. Wilms, acting as Agents, with an address for service in Luxembourg,

applicant,

v

Federal Republic of Germany, represented by T. Henze and J. Möller, acting as Agents,

defendant,

supported by

Kingdom of Denmark, represented by M. Wolff and V. Pasternak Jørgensen, acting as Agents,

Hungary, represented by M.Z. Fehér and K. Szijjártó, acting as Agents,

Republic of Austria, represented by C. Pesendorfer, acting as Agent,

Republic of Finland, represented by J. Heliskoski and H. Leppo, acting as Agents,

Kingdom of Sweden, represented by A. Falk, C. Meyer-Seitz, U. Persson and S. Johannesson, acting as Agents,

United Kingdom of Great Britain and Northern Ireland, represented by S. Behzadi-Spencer and J. Beeko, acting as Agents, assisted by G. Facenna, Barrister,

interveners,

THE COURT (Second Chamber),

composed of R. Silva de Lapuerta, President of the Chamber, J.L. da Cruz Vilaça, G. Arestis, J.-C. Bonichot (Rapporteur) and A. Arabadjiev, Judges,

* Language of the case: German.

Advocate General: N. Jääskinen,

Registrar: C. Strömholm, Administrator,

having regard to the written procedure and further to the hearing on 5 March 2014,

after hearing the Opinion of the Advocate General at the sitting on 22 May 2014,

gives the following

Judgment

- 1 By its application, the European Commission asks the Court to declare that, by excluding certain services (inter alia, impoundment for the purposes of hydroelectric power generation, navigation and flood protection, abstraction for irrigation and industrial purposes and personal consumption) from the concept of ‘water services’, the Federal Republic of Germany has failed to fulfil its obligations under Directive 2000/60/EC of the European Parliament and of the Council of 23 October 2000 establishing a framework for Community action in the field of water policy (OJ 2000 L 327, p. 1), particularly Articles 2(38) and 9 of that directive.

Legal context

Directive 2000/60

- 2 Directive 2000/60 includes the following recitals:

‘(1) Water is not a commercial product like any other but, rather, a heritage which must be protected, defended and treated as such.

...

(11) As set out in Article 174 of the Treaty, the Community policy on the environment is to contribute to pursuit of the objectives of preserving, protecting and improving the quality of the environment, in prudent and rational utilisation of natural resources, and to be based on the precautionary principle and on the principles that preventive action should be taken, environmental damage should, as a priority, be rectified at source and that the polluter should pay.

...

(13) There are diverse conditions and needs in the Community which require different specific solutions. This diversity should be taken into account in the planning and execution of measures to ensure protection and sustainable use of water in the framework of the river basin. Decisions should be taken as close as possible to the locations where water is affected or used. Priority should be given to action within the responsibility of Member States through the drawing-up of programmes of measures adjusted to regional and local conditions.

...

(19) This Directive aims at maintaining and improving the aquatic environment in the Community. This purpose is primarily concerned with the quality of the waters concerned. Control of quantity is an ancillary element in securing good water quality and therefore measures on quantity, serving the objective of ensuring good quality, should also be established.

(20) The quantitative status of a body of groundwater may have an impact on the ecological quality of surface waters and terrestrial ecosystems associated with that groundwater body.

...

(33) The objective of achieving good water status should be pursued for each river basin, so that measures in respect of surface water and groundwaters belonging to the same ecological, hydrological and hydrogeological system are coordinated.

...

(38) The use of economic instruments by Member States may be appropriate as part of a programme of measures. The principle of recovery of the costs of water services, including environmental and resource costs associated with damage or negative impact on the aquatic environment should be taken into account in accordance with, in particular, the polluter-pays principle. An economic analysis of water services based on long-term forecasts of supply and demand for water in the river basin district will be necessary for this purpose.

...'

3 Article 2 of Directive 2000/60, headed 'Definitions', provides:

'For the purposes of this Directive, the following definitions shall apply:

...

(38) "[w]ater services" means all services which provide, for households, public institutions or any economic activity:

- (a) abstraction, impoundment, storage, treatment and distribution of surface water or groundwater;
- (b) waste-water collection and treatment facilities which subsequently discharge into surface water;

(39) "[w]ater use" means water services together with any other activity identified under Article 5 and Annex II having a significant impact on the status of water.

This concept applies for the purposes of Article 1 and of the economic analysis carried out according to Article 5 and Annex III, point (b).

...'

4 Article 9 of Directive 2000/60, entitled 'Recovery of costs for water services', provides:

'1. Member States shall take account of the principle of recovery of the costs of water services, including environmental and resource costs, having regard to the economic analysis conducted according to Annex III, and in accordance in particular with the polluter-pays principle.

Member States shall ensure by 2010:

- that water-pricing policies provide adequate incentives for users to use water resources efficiently, and thereby contribute to the environmental objectives of this Directive,
- an adequate contribution of the different water uses, disaggregated into at least industry, households and agriculture, to the recovery of the costs of water services, based on the economic analysis conducted according to Annex III and taking account of the polluter-pays principle.

Member States may in so doing have regard to the social, environmental and economic effects of the recovery as well as the geographic and climatic conditions of the region or regions affected.

2. Member States shall report in the river basin management plans on the planned steps towards implementing paragraph 1 which will contribute to achieving the environmental objectives of this Directive and on the contribution made by the various water uses to the recovery of the costs of water services.

3. Nothing in this Article shall prevent the funding of particular preventive or remedial measures in order to achieve the objectives of this Directive.

4. Member States shall not be in breach of this Directive if they decide in accordance with established practices not to apply the provisions of paragraph 1, second sentence, and for that purpose the relevant provisions of paragraph 2, for a given water-use activity, where this does not compromise the purposes and the achievement of the objectives of this Directive. Member States shall report the reasons for not fully applying paragraph 1, second sentence, in the river basin management plans.'

5 Article 11 of Directive 2000/60, entitled 'Programme of measures', includes the following paragraphs:

'1. Each Member State shall ensure the establishment for each river basin district, or for the part of an international river basin district within its territory, of a programme of measures, taking account of the results of the analyses required under Article 5, in order to achieve the objectives established under Article 4. Such programmes of measures may make reference to measures following from legislation adopted at national level and covering the whole of the territory of a Member State. Where appropriate, a Member State may adopt measures applicable to all river basin districts and/or the portions of international river basin districts falling within its territory.

2. Each programme of measures shall include the "basic" measures specified in paragraph 3 and, where necessary, "supplementary" measures.

3. "Basic measures" are the minimum requirements to be complied with and shall consist of:

(a) those measures required to implement Community legislation for the protection of water, including measures required under the legislation specified in Article 10 and in part A of Annex VI;

(b) measures deemed appropriate for the purposes of Article 9;

...'

6 Annex III to Directive 2000/60 entitled ‘Economic analysis’, is worded as follows:

‘The economic analysis shall contain enough information in sufficient detail (taking account of the costs associated with collection of the relevant data) in order to:

- (a) make the relevant calculations necessary for taking into account under Article 9 the principle of recovery of the costs of water services, taking account of long term forecasts of supply and demand for water in the river basin district and, where necessary:
 - estimates of the volume, prices and costs associated with water services, and
 - estimates of relevant investment including forecasts of such investments;
- (b) make judgments about the most cost-effective combination of measures in respect of water uses to be included in the programme of measures under Article 11 based on estimates of the potential costs of such measures.’

Directive 2006/123/EC

7 Under Article 4 of Directive 2006/123/EC of the European Parliament and of the Council of 12 December 2006, on services in the internal market (OJ 2006 L 376, p. 36), entitled ‘Definitions’:

‘For the purpose of this Directive:

- (1) “service” means any self-employed economic activity, normally provided for remuneration, as referred to in Article 50 of the Treaty;
- (2) “provider” means any natural person who is a national of a Member State, or any legal person as referred to in Article 48 of the Treaty and established in a Member State, who offers or provides a service;
- (3) “recipient” means any natural person who is a national of a Member State or who benefits from rights conferred upon him by Community acts, or any legal person as referred to in Article 48 of the Treaty and established in a Member State, who, for professional or non-professional purposes, uses, or wishes to use, a service; ...’

Directive 2004/35/EC

8 Under Article 2(13) of Directive 2004/35/EC of the European Parliament and of the Council of 21 April 2004 on environmental liability with regard to the prevention and remedying of environmental damage (OJ 2004 L 143, p. 56), entitled ‘Definitions’, for the purposes of that directive ‘services’ and ‘natural resources services’ mean the functions performed by a natural resource for the benefit of another natural resource or the public.

Pre-litigation procedure and procedure before the Court

9 In August 2006 the Commission received a complaint to the effect that the Federal Republic of Germany was interpreting the definition of ‘water services’ referred to in Article 2(38) of Directive 2000/60 as meaning that the services in question were restricted to the supply of water and the collection, treatment and elimination of waste water, thereby narrowing the scope of Article 9 of that directive, relating to the recovery of the costs of water services.

- 10 In particular, according to that interpretation, impoundments, inter alia for the purposes of hydroelectric power generation, navigation and flood protection, do not come within the scope of water services and are therefore not taken into account for the application of the principle of recovery of costs under Article 9 and Annex III(a) of that directive.
- 11 On 7 November 2007 the Commission sent the Federal Republic of Germany a letter of formal notice in which the Commission made clear that the German legislation was not compatible with several provisions of Directive 2000/60 and that the Member State was incorrectly applying the concept of 'water services'. The Commission considered, in essence, that, in the interest of protecting water resources, the various uses of water had to have a price. Accordingly, the Member States have an obligation to provide for a pricing structure for the different water uses, even if they are not supplies of services in the conventional sense of the term. Thus, for example, mere navigation should be subject to a fee.
- 12 The Federal Republic of Germany replied to the letter of formal notice on 6 March 2008 and 24 September 2009.
- 13 On 30 September 2010, the Commission sent a supplementary letter of formal notice, to which the Federal Republic of Germany replied on 18 November 2010. On 27 July 2011, the Member State sent to the Commission the regulation on the protection of surface waters (*Verordnung zum Schutz der Oberflächengewässer*) of 20 July 2011, which transposes Article 5 of Directive 2000/60.
- 14 On 30 September 2011, the Commission sent the Federal Republic of Germany a reasoned opinion.
- 15 Following two extensions of the time-limit, the Federal Republic of Germany replied to that opinion on 31 January 2012, then, in July 2012, the Federal Republic of Germany notified the Commission of the transposition of Article 2(38) and (39) and Article 9 of Directive 2000/60.
- 16 The transposition of the provisions in question notwithstanding, the Commission took the view that the issue of the differing interpretation of the definition of 'water services' and, therefore, of the — in its view — incomplete application of Article 9 of Directive 2000/60 persisted. It therefore decided to bring the present action.
- 17 By orders of the President of the Court of 2, 5, 8, 11 and 15 April 2013, respectively, the Republic of Austria, the Kingdom of Sweden, the Republic of Finland, Hungary, the United Kingdom of Great Britain and Northern Ireland and the Kingdom of Denmark were granted leave to intervene in support of the form of order sought by the Federal Republic of Germany.

The action

Admissibility

Arguments of the parties

- 18 The Federal Republic of Germany contends that the Commission's action is inadmissible on the ground that it merely asks the Court to clarify a purely theoretical question, without substantiating how specifically it has failed to fulfil its obligations under the Treaties and Directive 2000/60. In arguing that the Federal Republic of Germany has failed to fulfil those obligations by excluding certain services from its interpretation of the concept of 'water services', the Commission is imprecise because it fails to identify specific conduct which should be changed.

- 19 The list of services referred to by the Commission in its forms of order sought by way of examples of that concept do not remedy that lack of precision because if the Court were to follow the Commission's line of argument, the Federal Republic of Germany would be unable to know whether other water services must be categorised in the same manner. Nor were those examples referred to in the reasoned opinion, the operative part of which was different from the forms of order sought in the present action.
- 20 The Commission contends that its action is perfectly clear in that it seeks a declaration that the Federal Republic of Germany is applying the elements listed in Article 2(38) of Directive 2000/60 cumulatively, with the result that numerous water services fall outside the scope of the definition laid down in that provision. Consequently, the activities referred to in the application are automatically excluded from the pricing structure in the territory of the Federal Republic of Germany.

Findings of the Court

- 21 It should be noted at the outset that, in the context of an action for failure to fulfil obligations, the purpose of the pre-litigation procedure is to give the Member State concerned an opportunity, on the one hand, to comply with its obligations under EU law and, on the other, to avail itself of its right to defend itself properly against the objections formulated by the Commission. The subject-matter of proceedings under Article 258 TFEU is therefore delimited by the pre-litigation procedure prescribed by that provision. The proper conduct of that procedure constitutes an essential guarantee required by the FEU Treaty not only in order to protect the rights of the Member State concerned, but also in order to ensure that any contentious procedure will have a clearly defined dispute as its subject-matter (see, inter alia, judgment in *Commission v Netherlands*, C-508/10, EU:C:2012:243, paragraphs 33 and 34).
- 22 By virtue of the first paragraph of Article 21 of the Statute of the Court of Justice of the European Union and Article 38(1)(c) of its Rules of Procedure, the Commission must, in any application made under Article 258 TFEU, indicate the specific complaints on which the Court is asked to rule and, at the very least in summary form, the legal and factual particulars on which those complaints are based. It follows that the Commission's action must contain a coherent and detailed statement of the reasons which have led it to conclude that the Member State in question has failed to fulfil one of its obligations under the Treaties (see, inter alia, judgment in *Commission v Netherlands*, EU:C:2012:243, paragraphs 35 and 36).
- 23 In the context of the present proceedings, it is clear that the application does contain a coherent and detailed statement of the reasons which have led the Commission to conclude that the Federal Republic of Germany has failed to fulfil its obligations under Articles 2(38) and 9 of Directive 2000/60. It is apparent from both the pre-litigation procedure and in particular the reasoned opinion issued by the Commission to the Federal Republic of Germany that in the application lodged with the Court the Commission claims, in essence, that due to that Member State's interpretation of the concept of 'water services', some of them remain, incorrectly, outside the scope of the obligation introduced by that directive, which requires them to be subject to the principle of recovery of the costs of water services, including environmental and resource costs.
- 24 The procedure for a declaration of a failure on the part of a State to fulfil an obligation itself affords a means of determining the exact nature of the obligations of the Member States in case of differences of interpretation (see, to that effect, judgment in *Commission v Spain*, C-196/07, EU:C:2008:146, paragraph 28).
- 25 It should also be noted that, without prejudice to the Commission's obligation to discharge the burden of proof upon it in proceedings under Article 258 TFEU, there is nothing precluding the Commission from acting on such a difference of interpretation and bringing proceedings before the Court, alleging a

failure by the Member State concerned to fulfil its obligations, putting forward the numerous sets of circumstances which, in its view, are contrary to EU law, even though it does not identify each and every one of them (see, by analogy, *inter alia* judgment in *Commission v Italy*, C-135/05, EU:C:2007:250, paragraphs 20 to 22)

- 26 In the present case, the interpretation given by the Member State concerned to a provision of EU law which differs from the one endorsed by the Commission gives rise to a situation in the territory of that Member State where there is an administrative practice whose existence is undisputed even though it is not generalised. Accordingly, the fact that the Commission has given only a few examples of that practice in support of its argument does not mean its action lacks the necessary detail to enable an assessment to be made of the subject-matter of the action.
- 27 It remains to be determined whether, in the operative part of the application, the Commission refers to examples of situations which, in its view, demonstrate the Federal Republic of Germany's failure to fulfil its obligations, even though those examples were not in the operative part of the reasoned opinion issued to it. This cannot be regarded as expanding the subject-matter of the action, which remains an application for a declaration of failure to fulfil obligations under Articles 2(38) and 9 of Directive 2000/60.
- 28 Accordingly, the Commission's action is admissible.

Substance

Arguments of the parties

- 29 The Commission submits that, through its restrictive interpretation of the concept of 'water services' within the meaning of Article 2(38) of Directive 2000/60, the Federal Republic of Germany is misapplying Article 9 of that directive, the scope of which concerns the recovery of the costs of those services, the water-pricing policy and the application of the polluter-pays principle to water users.
- 30 Contrary to the Federal Republic of Germany's assertions, the concept of 'water services' covers not only the supply of water and the treatment of waste water. The very wording of Article 2(38) of Directive 2000/60, its context and the objectives pursued by that directive lead to the conclusion that the definition of those services encompasses other activities such as navigation, hydroelectric power generation and flood protection.
- 31 In referring to abstraction, impoundment, storage, treatment and distribution, Article 2(38) of Directive 2000/60 lists various activities, one of which must be present in the water service; the use of commas between those terms and the use of the conjunction 'and' does not have any other meaning. A water service does not require that all the activities listed in Article 2(38)(a) or (b) of that directive to be present cumulatively.
- 32 The purpose of that directive is to ensure efficient use of water resources, by providing for adequate participation by the various water services towards the recovery of the costs associated with those water services, in the light of the polluter-pays principle. That purpose would not be undermined if, as the Federal Republic of Germany argues, undertakings involved in water abstraction outside water supply or waste-water treatment activities, such as undertakings involved in open-cast mining in certain Länder, were not required to cover the costs of those abstractions.
- 33 According to the Commission, Directive 2000/60 and Directive 2004/35 have the same legal basis and both pursue objectives aimed at protecting the environment, which, the Federal Republic of Germany asserts, does not allow for a different interpretation of the concept of 'Funktion' found in the German-language version of the latter directive and the concept of 'Dienstleitung' found in Directive

2000/60, before going on to infer that the latter refers to human activity. Moreover, in environmental law, services do not presuppose participation by a human being, as observed in the assessment of ecosystem services contained in the Millennium Ecosystem Assessment launched by the United Nations in 2001 (CREDOC, Biotope, Asconit Consultants, 2009).

- 34 The Commission submits that its broad interpretation of the concept of ‘water services’ does not make the distinction drawn in Article 2(39) of Directive 2000/60 superfluous in its concept of water services. The latter encompasses not only water services but also, more broadly, any activity liable to have a significant impact on water conditions, such as competitive fishing, bathing or navigation on natural water which could not be impounded.
- 35 The Commission submits that, in those circumstances, the concept of water services covers abstraction for irrigation purposes, which places significant pressure on bodies of water, abstraction for industrial purposes, auto-supply, impoundment for hydroelectric power operations, navigation and flood protection, as well as water storage, treatment and distribution. Yet it would appear that certain Länder, for example, do not charge for abstraction or allow for broad derogations.
- 36 In the Federal Republic of Germany’s submission, the Commission’s action is based on an incorrect overall approach with regard to Directive 2000/60, in particular the water-pricing structure for water services which, although an important instrument for providing incentive for greater economy and prudence in water resource management, is not the only means provided for in that directive for attaining that objective. The Commission’s interpretations of Articles 2(38) and 9 of Directive 2000/60 nevertheless disregard the management system of that directive, the central idea of which is that water protection requirements in river basins must be weighed up against legitimate rights of use. The Commission thus disregards the existing balance between the various management instruments provided for in that directive as much for reasons of subsidiarity as efficiency.
- 37 The Federal Republic of Germany submits that the very structure of Article 2(38)(a) and (b) of Directive 2000/60 is based on a clear separation between activities relating to the supply of water and the treatment of waste water. The former are usually necessary stages for the supply of water (acquisition, treatment, storage, routing, distribution); they are set out in detail because it is necessary to specify that those stages must be taken into account in the calculation of costs.
- 38 The Federal Republic of Germany submits that the concept of ‘water services’ includes not the various activities relating to the supply of water, but rather the supply as a whole. Including those activities in the concept amounts to an unlawful expansion of its scope. That definition does not deprive Directive 2000/60 of its useful effect, which results from a balance between, on the one hand, water protection requirements and, on the other, legitimate uses of water. It may not be inferred from the mere fact that Article 9 of Directive 2000/60 refers to the polluter-pays principle that the obligation to recover costs must be extended to all uses and actions which harm water, since there are other measures specifically laid down such as those found in Annex VI, Part B, to that directive.
- 39 In order to define the concept of ‘services’, the Federal Republic of Germany considers that the definition given in Article 57 TFEU, which requires a bilateral relationship, should be applied, which is not found, for example, in water use for navigation or flood protection measures, but is established for water supply activities and waste-water treatment.
- 40 That definition of services is not to be found in Directive 2004/35, which was adopted four years after Directive 2000/60 and does not contain any reference to it in that regard. The German version, moreover, does not refer to ‘Dienstleistung’, but rather to ‘Funktionen’, which does not presuppose human activity. Nor is it to be found in the concept of ‘ecosystem services’, which emerged long after Directive 2000/60.

- 41 It should also be noted that the Commission's broad interpretation of the concept of 'water services' in reality leads to a denial of the existence of other uses of water, such as those referred to in Article 2(39) of Directive 2000/60. The *travaux préparatoires* for Article 2(38) of that directive, which shed light on how the latter provisions is to be interpreted, show, inter alia, that the Commission itself had maintained that the principle of recovery of costs was intended to apply only to the supply of drinking water and the treatment of waste water.
- 42 In their statements in intervention, the Kingdom of Denmark, Hungary, the Republic of Austria, the Republic of Finland, the Kingdom of Sweden and the United Kingdom of Great Britain and Northern Ireland have all submitted observations in support of the forms of order sought by the Federal Republic of Germany.

Findings of the Court

- 43 It should be borne in mind, as a preliminary point, that in accordance with the Court's settled case-law, the interpretation of a provision of EU law requires that account be taken not only of its wording and the objectives it pursues, but also its context and the provisions of EU law as a whole. The origins of a provision of EU law may also provide information relevant to its interpretation (see, inter alia, judgment in *Inuit Tapiriit Kanatami and Others v Parliament and Council*, C-583/11 P, EU:C:2013:625, paragraph 50 and the case-law cited).
- 44 In the present case, it is clear from the wording of Article 9 of Directive 2000/60 that the Member States are to take account of the principle of recovery of the costs of water services, including environmental and resource costs, having regard to the economic analysis conducted according to Annex III, and in accordance in particular with the polluter-pays principle. Member States must inter alia ensure that water-pricing policies provide adequate incentives for users to use water resources efficiently and thereby contribute to the environmental objectives of Directive 2000/60. Article 2(38) of that directive defines 'water services' as comprising all services which provide, for households, public institutions or any economic activity, both abstraction, impoundment, storage, treatment and distribution of surface water or groundwater, as well as waste-water collection and treatment facilities which subsequently discharge into surface water.
- 45 Those provisions, which do not define the concept of 'services', do not make it immediately clear whether the EU legislature intended to make any service relating to each of the activities listed in Article 2(38)(a) of Directive 2000/60, in addition to waste-water treatment activities referred to in Article 2(38)(b), subject to the principle of recovery of costs, as maintained in essence by the Commission, or only those services associated with the supply of water, by requiring account to be taken of all the stages of that activity, as listed in Article 2(38)(a), as well as those associated with waste-water treatment, as referred to in Article 2(38)(b), as contended by the Federal Republic of Germany.
- 46 It is, therefore, appropriate to begin by analysing the context and overall scheme of the provisions in question in order to ascertain whether cost-pricing is required for all activities associated with the abstraction, impoundment, storage, treatment and distribution of surface water or groundwater, as maintained in essence the Commission.
- 47 First of all, it is apparent from the *travaux préparatoires* for Directive 2000/60, as summarised by the Advocate General in points 68 and 69 of his Opinion, that the EU legislature intended, on the one hand, to allow the Member States to determine, on the basis of an economic analysis, the measures to be adopted for the purposes of the application of the principle of recovery of costs, whilst on the other to promote the pricing of those costs, without extending it to all services associated with water use, as practices in the Member States varied widely, inter alia in terms of pricing for water supply services and waste-water treatment.

- 48 Next, Directive 2000/60, in requiring in Article 9 that Member States are to have regard to the principle of recovery of the costs of water services and ensure that water-pricing policies provide adequate incentives for users to use water resources efficiently and thereby contribute to the environmental objectives of that directive, does not per se impose a generalised pricing obligation in respect of all activities relating to water use.
- 49 It is therefore necessary to examine, secondly, the scope of those provisions in the light of the objectives pursued by Directive 2000/60.
- 50 In that regard, it must be noted that Directive 2000/60 is a framework directive adopted on the basis of Article 175(1) EC (now Article 192 TFEU). It establishes the common principles and an overall framework for action in relation to water protection and coordinates, integrates and, in a longer perspective, develops the overall principles and structures for protection and sustainable use of water in the European Union. The common principles and overall framework for action which it lays down are to be developed subsequently by the Member States, which are to adopt a series of individual measures in accordance with the timescales laid down in the directive. However, the directive does not seek to achieve complete harmonisation of the rules of the Member States concerning water (judgment in *Commission v Luxembourg*, C-32/05, EU:C:2006:749, paragraph 41).
- 51 As evidenced by recital 19 in the preamble to Directive 2000/60, it aims at maintaining and improving the aquatic environment in the European Union. This purpose is primarily concerned with the quality of the waters concerned. Control of quantity is an ancillary element in securing good water quality and therefore measures on quantity, serving the objective of ensuring good quality, should also be established.
- 52 Having found that the existing conditions and requirements call for specific solutions, the EU legislature intended, as is apparent inter alia from recital 13 in the preamble to Directive 2000/60, that that diversity of solutions be taken into account in the planning and implementation of measures aimed at ecologically viable protection and use of water in river basins and that decisions be taken at the level as close as possible to the places of use or degradation of water. Consequently, and without prejudice to the importance of water-pricing policies and the polluter-pays principle, as reaffirmed by that directive, priority must be given to actions coming within the jurisdiction of the Member States, in drawing up action programmes adapted to local and regional conditions.
- 53 Thus, as observed by the Advocate General inter alia in point 72 of his Opinion, Directive 2000/60 is based essentially on the principles of management per river basin; the setting of objectives per body of water; plans and programmes; an economic analysis of the detailed arrangements governing water pricing; the taking into account of the social, environmental and economic effects of cost recovery, and also the geographic and climatic conditions of the region(s) concerned.
- 54 To that end, Article 11 provides that each Member State must ensure the establishment for each river basin district, or for the part of an international river basin district within its territory, of a programme of measures, taking account of the results of the analyses required under Article 5 of that directive, in order to achieve the objectives established under Article 4 thereof. Under Article 11(3)(b), measures relating to the recovery of the costs for water services, such as those provided for under Article 9 of Directive 2000/60, are among the minimum requirements to be included in such a programme.
- 55 It is thus clear that measures for the recovery of the costs for water services are one of the instruments available to the Member States for qualitative management of water in order to achieve rational water use.

- 56 Although, as rightly pointed out by the Commission, the various activities listed in Article 2(38) of Directive 2000/60, such as abstraction or impoundment, may have an impact of the state of bodies of water and are therefore liable to undermine the achievement of the objectives pursued by that directive, it cannot be inferred therefrom that, in any event, the absence of pricing for such activities will necessarily jeopardise the attainment of those objectives.
- 57 In that regard, Article 9(4) of Directive 2000/60 provides that the Member States may, subject to certain conditions, opt not to proceed with the recovery of costs for a given water-use activity, where this does not compromise the purposes and the achievement of the objectives of that directive.
- 58 It follows that the objectives pursued by Directive 2000/60 do not necessarily imply that Article 2(38)(a) thereof must be interpreted as meaning that they all subject all activities to which they refer to the principle of recovery of costs, as maintained in essence by the Commission.
- 59 In those circumstances, the fact that the Federal Republic of Germany does not make some of those activities subject to that principle does not establish by itself, in the absence of any other ground of complaint, that that Member State has thereby failed to fulfil its obligations under Articles 2(38) and 9 of Directive 2000/60.
- 60 In the light of all the above considerations, the Commission's action must be dismissed.

Costs

- 61 Under Article 138(1) of the Rules of Procedure of the Court of Justice, the unsuccessful party must be ordered to pay the costs if they have been applied for in the other party's pleadings. Since the Federal Republic of Germany has applied for costs and the Commission has been unsuccessful, the latter must be ordered to pay the costs. Under Article 140(1) of the Rules of Procedure, Member States intervening in the proceedings are to bear their own costs; it must therefore be held that the Kingdom of Denmark, Hungary, the Republic of Austria, the Republic of Finland, the Kingdom of Sweden and the United Kingdom of Great Britain and Northern Ireland must bear their own costs.

On those grounds, the Court (Second Chamber) hereby:

1. **Dismisses the action;**
2. **Orders the European Commission to pay the costs;**
3. **Orders the Kingdom of Denmark, Hungary, the Republic of Austria, the Republic of Finland, the Kingdom of Sweden and the United Kingdom of Great Britain and Northern Ireland to bear their own costs.**

[Signatures]