

Action brought on 27 October 2016 — European Commission v Federal Republic of Germany**(Case C-543/16)**

(2017/C 006/38)

*Language of the case: German***Parties**

Applicant: European Commission (represented by: C. Hermes and E. Manhaeve, acting as Agents)

Defendant: Federal Republic of Germany

Form of order sought

The Commission claims that the Court should:

- declare that, by failing to adopt additional measures or reinforced actions as soon as it became clear that the measures of the action programme were insufficient to achieve the objectives of the directive, and by not revising its action programme in order to bring it into conformity with the mandatory requirements of Annexes II and III, the Federal Republic of Germany has failed to fulfil its obligations under Article 5(5) and (7) of, in conjunction with Annexes II and III to, Council Directive 91/676/EEC of 12 December 1991 concerning the protection of waters against pollution caused by nitrates from agricultural sources;⁽¹⁾
- order the Federal Republic of Germany to pay the costs of the proceedings.

Pleas in law and main arguments

By failing to adopt additional measures or reinforced actions, even though it would have become clear at the latest by the time of Germany's submission, on 4 July 2012, of the fifth report pursuant to Article 10 of the directive for the period from 2008 to 2011 that the measures of the German action programme would be insufficient to achieve the objectives of the directive, the Federal Republic of Germany infringed Article 5(5) of Directive 91/676/EEC.

Moreover, by failing to update the German action programme, even though that was required in view of the situation demonstrated in the abovementioned report of 4 July 2012, the Federal Republic of Germany infringed Article 5(7) of the directive. Thus the Federal Republic of Germany was in any event required to take measures that would fully and properly correspond to the substantive requirements of Article 5(3) and (4) of, in conjunction with Annexes II and III to, the directive.

That is not the case under the applicable German rules, given that they:

- include, in relation to the principle of balanced use of fertilisers, a calculation of fertiliser requirements which is not be consistent with the actual nutritional needs of individual crops, or with the requirements in the different climactic soil regions and the monitoring of the effect of the use of fertilisers on water protection, and allow an operational excess of nutrients of up to 60 kilograms of nitrogen per hectare per year (see Annex III, point 1, number 3, to the directive);
- provide for an exception for 'solid manure without poultry manure' during restricted periods, which does not include a distinction on the basis of climactic soil regions, types of fertiliser, practices relating to the use of fertilisers and other environmental factors, and prescribe, in relation to restricted periods, only periods of two and a half to three months (see Annex III, point 1, number 1, and Annex II, Part A, point 1, to the directive);
- prescribe, in relation to the prescribed capacity of vessels for the storage of manure, storage capacities which are based on restricted periods which are too short and, with the exception of the requirements for Berlin, Saxony and Thuringia, relate only to the storage of liquid manure (see Annex II, Part A, point 5, to the directive);
- allow the land application of a maximum amount of manure corresponding to 230 kilograms of nitrogen per hectare per year on grassland and pastures under certain conditions (see Annex III, point 2, first subparagraph, to the directive);

- provide, in relation to the land application of fertiliser to steeply sloping land, exceptions for solid manure, with the exception of poultry manure, and provide for limitations on the land application of fertilisers high in nitrogen only in relation to a slope with more than a 10 % gradient and prohibitions in that case only within a distance of three meters to the upper edge of the bank of the waters, and therefore depart in several respects from the relevant scientific study (see Annex II, Part A, point 2, and Annex III, point 1, number 3(a), to the directive);
- prohibit the land application of fertilisers only in situations where there is snow cover of more than five centimetres and in relation to *'land which is constantly frozen and does not superficially thaw over the course of the day'* (see Annex II, Part A, point 3, and Annex III, point 1, numbers 3(a) and (b), to the directive).

The regular notifications of the German Government regarding the scheduled amendment of the Düngeverordnung (German decree on fertilisers) do not, in the Commission's view, disprove the infringements of Article 5(5) and (7) of the directive that are alleged, as the rules in question did not enter into force before the expiry, on 11 September 2014, of the period set in the reasoned opinion and have not entered into force since that time.

⁽¹⁾ OJ 1991 L 375, p. 1.