

Request for a preliminary ruling from the Verwaltungsgericht Wien (Austria) lodged on 19 March 2018 — Wasserleitungsverband Nördliches Burgenland and Others

(Case C-197/18)

(2018/C 268/25)

Language of the case: German

Referring court

Verwaltungsgericht Wien

Parties to the main proceedings

Applicants: Wasserleitungsverband Nördliches Burgenland, Robert Prandl, Gemeinde Zillingdorf

Defendant authority: Bundesministerin für Nachhaltigkeit und Tourismus, formerly Bundesminister für Land und Forstwirtschaft, Umwelt und Wasserwirtschaft

Questions referred

Is Article 288 TFEU, in conjunction with Article 5(4) or with Article 5(5) of, in conjunction with paragraph 2 of Annex I to, Council Directive 91/676/EEC ⁽¹⁾ of 12 December 1991 concerning the protection of waters against pollution caused by nitrates from agricultural sources ('the Nitrates Directive'), to be interpreted as meaning that:

- (a) a public water supplier, which provides water services and which in that regard, prior to delivering the drinking water to consumers (with compulsory connection), treats this water with high nitrate values taken from the wells available to it for that purpose in such a way as to attain a value of less than 50 mg/l nitrate concentration prior to delivery to consumers, and which is also required by law to supply water within a specified geographical area, is directly concerned within the meaning of the case-law of the Court of Justice of the European Union (in this case possibly by failure to implement Council Directive 91/676/EEC of 12 December 1991), in so far as it is concerned by what are claimed to be inadequate action plans (as the value of 50 mg/l nitrate concentration in the water in this water supplier's area is exceeded) and must for that reason take measures to treat the water and is therefore granted subjective rights under the Nitrates Directive
- (a.1) to amendment of an action programme already adopted nationally to implement the Nitrates Directive (pursuant to Article 5(4) of the Nitrates Directive) in such a way that stricter measures with the aim of attaining the objectives of Article 1 of the Nitrates Directive and specifically attaining a value of up to a maximum 50 mg/l nitrate concentration in the groundwaters at individual intake points are thus adopted?
- (a.2) to the adoption of additional measures or reinforced actions (pursuant to Article 5(5) of the Nitrates Directive) with the aim of achieving the objectives laid down in Article 1(1) of the Nitrates Directive and specifically attaining a value of up to a maximum 50 mg/l nitrate concentration in the groundwaters at individual intake points?
- (b) a consumer, who would be authorised by law to use the water from his own domestic well for his personal consumption and who does not use this water on account of high nitrate values (and who was unable to use it at the time of the application underlying the proceedings and who could, admittedly, use it at the time of the present application to the Court of Justice of the European Union, even though it is common ground that a further increase of the nitrate value to above 50 mg/l nitrate concentration in the water is to be expected), but who rather receives the water from a public water supplier, is to that extent directly concerned within the meaning of the case-law of the European Union (in this case possibly by failure to implement Council Directive 91/676/EEC 12 December 1991), in so far as he is concerned by what are claimed to be inadequate action plans and the value of 50 mg/l nitrate concentration in the water of his water intake (domestic well) is exceeded, with the result that he is unable to exercise his legal right to make limited use of the groundwaters on his property and is therefore granted subjective rights under the Nitrates Directive

- (b.1) to amendment of an action programme already adopted nationally to implement the Nitrates Directive (pursuant to Article 5(4) of the Nitrates Directive) in such a way that stricter measures with the aim of attaining the objectives of Article 1 of the Nitrates Directive and specifically attaining a value of up to a maximum 50 mg/l nitrate concentration in the groundwaters at individual intake points are thus adopted?
- (b.2) to the adoption of addition measures or reinforced actions (pursuant to Article 5(5) of the Nitrates Directive) with the aim of achieving the objectives laid down in Article 1(1) of the Nitrates Directive and specifically attaining a value of up to a maximum 50 mg/l nitrate concentration in the groundwaters at individual intake points?
- (c) a municipality, which, as a public body, uses or makes available a communal well, which it operates, only for non-drinking water on account of nitrate values of over 50 mg/l nitrate concentration — without this affecting the drinking water supply — is directly concerned within the meaning of the case-law of the Court of Justice of the European Union (in this case possibly by failure to implement Council Directive 91/676/EEC 12 December 1991 as a result of inadequate action plans in this regard) in so far as the value of 50 mg/l nitrate concentration in the water at the source is exceeded and therefore a use as drinking water is not available, and is therefore granted subjective rights under the Nitrates Directive
- (c.1) to amendment of an action programme already adopted nationally to implement the Nitrates Directive (pursuant to Article 5(4) of the Nitrates Directive) in such a way that stricter measures with the aim of attaining the objectives of Article 1 of the Nitrates Directive and specifically attaining a value of up to a maximum 50 mg/l nitrate concentration in the groundwaters at individual intake points are thus adopted?
- (c.2) to the adoption of additional measures or reinforced actions (pursuant to Article 5(5) of the Nitrates Directive) with the aim of achieving the objectives laid down in Article 1(1) of the Nitrates Directive and specifically attaining a value of up to a maximum 50 mg/l nitrate concentration in the groundwaters at individual intake points?

In all three cases the protection of consumer health is safeguarded in any event either — in cases (b) and (c) — by taking the water from water suppliers providing it (with compulsory connection and a right to connection) or — in case (a) — by the corresponding treatment measures.

⁽¹⁾ Council Directive 91/676/EEC of 12 December 1991 concerning the protection of waters against pollution caused by nitrates from agricultural sources (OJ 1991 L 375, p. 1).

Appeal brought on 18 March 2018 by Asociación de la pesca y acuicultura del entorno de Donana y del Bajo Guadalquivir (Pebagua) against the order of the General Court (Seventh Chamber) delivered on 16 January 2018 in Case T-715/16 Pebagua v Commission

(Case C-204/18 P)

(2018/C 268/26)

Language of the case: Spanish

Parties

Appellant: Asociación de la pesca y acuicultura del entorno de Donana y del Bajo Guadalquivir (Pebagua) (represented by: A. J. Uceda Sosa, abogado)

Other party to the proceedings: European Commission