

2. If Question 1 is answered to the effect that the present entry ban does come within the scope of Directive 2008/115/EC:
- (a) Does the administrative annulment of the return decision (in this case: the removal warning) have the result that an entry ban, within the meaning of Article 3.6 of Directive 2008/115/EC, ordered at the same time becomes unlawful?
 - (b) Does this legal consequence arise even if the administrative expulsion order preceding the return decision is or has become final?

(¹) OJ 2008 L 348, p. 98.

Action brought on 22 July 2019 — European Commission v Kingdom of Spain

(Case C-559/19)

(2019/C 348/10)

Language of the case: Spanish

Parties

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

Defendants: Kingdom of Spain

Form of order sought

The applicant claims that the Court should:

- declare that, by failing to adopt the necessary measures to prevent the deterioration of the state of the bodies of groundwater in the Doñana region, by failing to carry out an additional characterisation of those which present a risk, without also determining the necessary measures, and by failing to include appropriate basic and complementary measures in the programme of measures for the River Basin Management Plan for the Guadalquivir River Basin District, the Kingdom of Spain has failed to fulfil its obligations under Article 4(1)(b) in conjunction with Article 1(a) and point 2.1.2 of Annex V; Article 5 read in conjunction with point 2.2 of Annex II; and Article 11(1)(3)(a), (c) and (e) and (4) of 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 (¹);
- declare that, by failing to adopt appropriate measures to prevent deterioration of the natural habitats and of the habitats of the species which led to the designation of the areas considered here (SPA/SCI ES0000024 Doñana, SPA/SCI ES61 50009 Doñana North and West and SPA ES61 50012 Dehesa del Estero and Montes de Moguer), the Kingdom of Spain has failed to fulfil its obligations under Article 6(2) read in conjunction with Article 7 of Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora (²);
- order the Kingdom of Spain to pay the costs.

Pleas in law and main arguments

- 1) Failure to fulfil obligations under Article 4(1)(b) of Directive 2000/60/EC, read in conjunction with Article 1(a) and point 2.1.2 of Annex V to that directive

Article 4(1)(b) of Directive 2000/60/EC requires Member States prevent the deterioration of the status of all bodies of groundwater? It must be read in conjunction with Article 1(a) of the directive, which specifies the environmental objectives to be achieved by Member States with regard to groundwater, and point 2.1.2. of Annex V thereto, which defines the good quantitative status of groundwater. The Commission considers that the Kingdom of Spain has not taken the necessary measures to prevent deterioration due to overexploitation of the bodies of groundwater in the region of Doñana. The Commission therefore concludes that the Kingdom of Spain has failed to fulfil its obligations under Article 4(1)(b) of Directive 2000/60/EC, read in conjunction with Article 1(a) and point 2.1.2 of Annex V thereto.

- 2) Failure to fulfil obligations under Article 5 of Directive 2000/60/EC, read in conjunction with point 2.2 of Annex II to that directive.

Article 5 of Directive 2000/60/EC sets out the procedure to be followed for the river basin district, imposing in each case an analysis of the characteristics of the district, a study of the impact of human activity on the status of surface water and groundwater, and an economic analysis of water use. Where, following the initial analysis of the characteristics, a body of groundwater is identified as posing a risk, Member States are required, pursuant to point 2.2 of Annex II to the Directive, to carry out an additional characterisation. The Commission considers that the Kingdom of Spain has not correctly applied Article 5(1) of Directive 2000/60/EC, read in conjunction with point 2.2 of Annex II to that Directive, in so far as it has not carried out an additional characterisation of the groundwater bodies in the district of Doñana which exposed to a risk, without determining the necessary measures either. The Commission therefore concludes that the Kingdom of Spain has failed to fulfil its obligations under Article 5 of Directive 2000/60/EC, read in conjunction with point 2.2 of Annex II to that directive.

- 3) Infringement of Article 11(1)(3)(a), (c) and (e) and (4) of Directive 2000/60/EC.

Under Article 11(1) of Directive 2000/60/EC, Member States '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'. Article 11(3)(a), (c) and (e) sets out some of the basic measures to be included in that programme of measures. Article 11(4) of that provision refers to accompanying measures, which are those designed and implemented in addition to the basic measures. The Commission submits that the Kingdom of Spain failed to include in the River Basin Management Plan for the Guadalquivir River Basin District the appropriate basic and complementary measures and that the Kingdom of Spain has therefore failed to fulfil its obligations under Article 11(1), (3)(a), (c) and (e), and (4) of Directive 2000/60/EC.

- 4) Infringement of Article 6(2) read in conjunction with Article 7 of Directive 92/43/EEC.

Article 6(2) of Directive 92/43/EEC lays down, on the basis of the principle of prevention, a general duty of protection which requires that habitats and species for which an area has been designated must be protected from any deterioration or disturbance likely to have a significant effect contrary to the objectives of the directive. Under Article 7 of that directive, that duty of protection extends to areas classified as Special Protection Areas for birds (SPAs) under Council Directive 79/409/EEC [of 2 April 1979] on the conservation of wild birds⁽¹⁾. The Commission considers that, by failing to take appropriate measures to prevent deterioration of the natural habitats and habitats of the species which led to the designation of the areas SPA/SCI ES0000024 Doñana, SPA/SCI ES61 50009 Doñana North and West and SPA ES61 50012 Dehesa del Estero and Montes de Moguer, the Kingdom of Spain has failed to fulfil its obligations under Article 6(2), read in conjunction with Article 7, of Directive 92/43/EEC.

⁽¹⁾ OJ 2000, L 327, p. 1

⁽²⁾ OJ 1992, L 206, p. 7

⁽³⁾ OJ 1979, L 103, p. 1.