

The Evolution of Environmental Law and Sustainability Policy in the European Union

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- IPPC: integral pollution preventive control
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X. THE IMPLEMENTATION IN SPAIN OF THE LANDFILL AND END-OF-LIFE VEHICLES DIRECTIVES

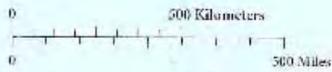
XI. CASE STUDIES

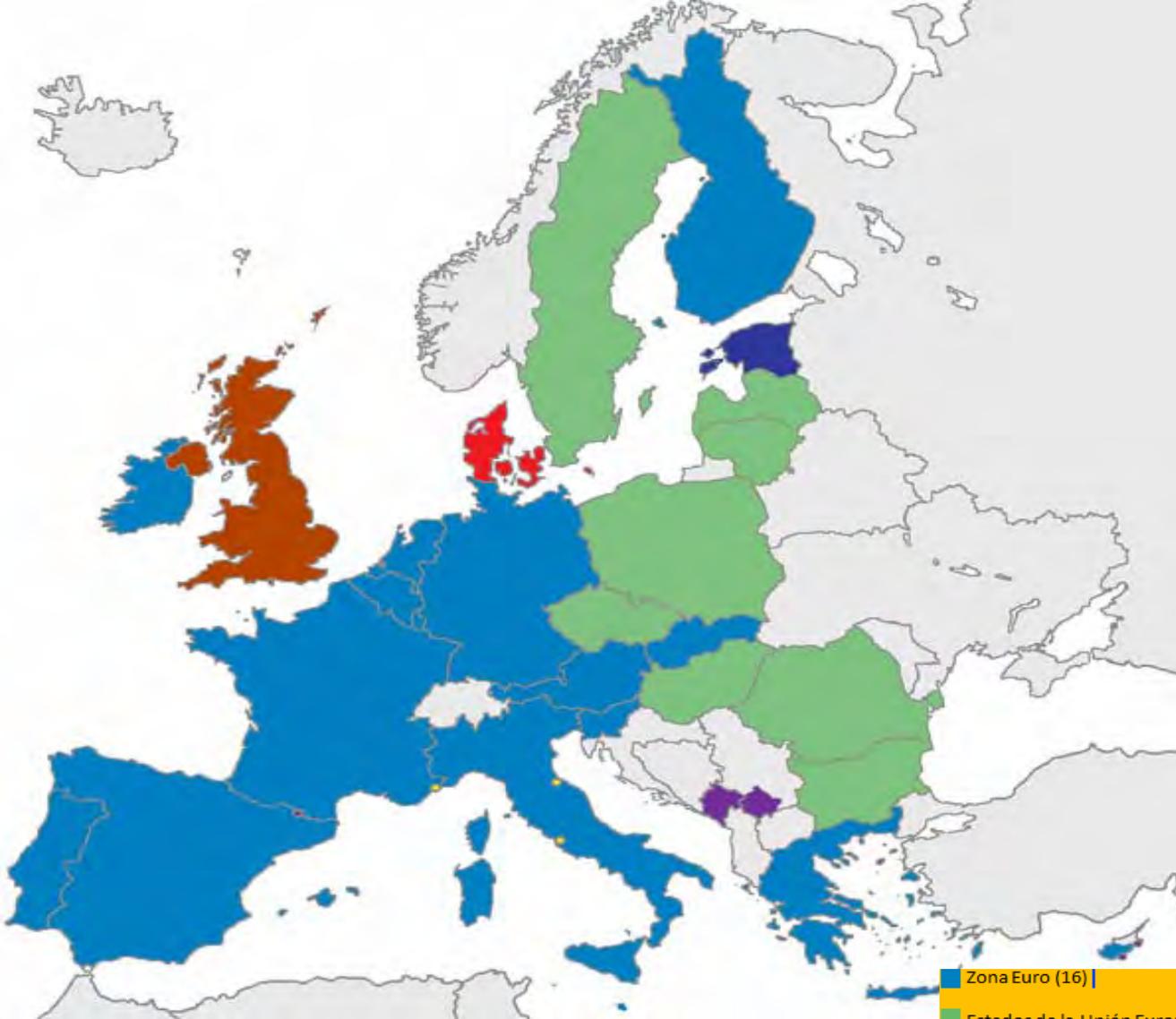
Map of the European Union

The expansion of the European Union

- 1957 The Original Six
- 1973 The first enlargement
- 1981 The first Mediterranean enlargement
- 1986 The second Mediterranean enlargement
- 1995 The EFTA enlargement
- 2004 The first Eastern enlargement
- 2007 The second Eastern enlargement
- Candidate countries
- Potential candidate countries

 Refer to www.oxfordtextbooks.co.uk/orc/craiganddebureaux/ for interactive version of map and further information on Member States.





- Zona Euro (16)
- Estados de la Unión Europea obligados a incorporarse a la Zona Euro (9)
- Estados de la Unión Europea con una cláusula de exclusión de la Zona Euro (1)
- Estados de la Unión europea que tienen previsto un referéndum para decidir su incorporación a la Zona Euro (1)
- Estados no pertenecientes a la Unión Europea pero que utilizan el Euro de forma oficial mediante un acuerdo (5)
- Zonas no pertenecientes a la Unión Europea pero que utilizan el Euro *de facto* sin un acuerdo (4)

I. The Treaty of Rome. 1957. Foundation of the European Economic Community.

(No mention to environment)

**With exception. Art. 308, which permitted
to adopt measures in order to achieve the
proposals of the economical aims of the
Treaty.**

**“Implied powers”. The basis of the first
environmental Regulations and Directives.**

II. The Single European Act. 17 February 1986 (Luxembourg)

Environment

1. Action by the Community relating to the **environment** shall have the following objectives:
 - to preserve, protect and improve the quality of the environment;
 - to contribute towards protecting human health;
 - to ensure a prudent and rational utilization of natural resources.
2. Action by the Community relating to the environment shall be based on the principles that preventive action should be taken, that environmental damage should as a priority be rectified at source, and that the polluter should pay. Environmental protection requirements shall be a component of the Community's other policies.

3. In preparing its action relating to the environment, the Community shall take account of

- available scientific and technical data;
- environmental conditions in the various regions of the Community,
- the potential benefits and costs of action or of lack of action;
- the economic and social development of the Community as a whole and the balanced development of its regions.

4. **The Community shall take action relating to the environment to the extent to which the objectives referred to in paragraph 1 can be attained better at Community level than at the level of the individual Member States.** Without prejudice to certain measures of a Community nature, the Member States shall finance and implement the other measures.

5. Within their respective spheres of competence, the Community and the Member States shall co-operate with third countries and with the relevant international organizations. The arrangements for Community co-operation may be the subject of agreements between the Community and the third parties concerned, which shall be negotiated and concluded in accordance with Article 228.

The previous paragraph shall be without prejudice to Member States' competence to negotiate in international bodies and to conclude international agreements.

III. Treaty on European Union. Maastricht 1992



Article 2

The Union shall set itself the following objectives:

- to promote economic and social progress and a high level of employment and to achieve balanced and sustainable development, in particular through the creation of an area without internal frontiers, through the strengthening of economic and social cohesion and through the establishment of economic and monetary union, ultimately including a single currency in accordance with the provisions of this Treaty,
- to assert its identity on the international scene, in particular through the implementation of a common foreign and security policy including the progressive framing of a common defence policy, which might lead to a common defence, in accordance with the provisions of Article 17,
- to strengthen the protection of the rights and interests of the nationals of its Member States through the introduction of a citizenship of the Union,

- to maintain and develop the Union as an area of freedom, security and justice, in which the free movement of persons is assured in conjunction with appropriate measures with respect to external border controls, asylum, immigration and the prevention and combating of crime,
- to maintain in full the “acquis communautaire” and build on it with a view to considering to what extent the policies and forms of cooperation introduced by this Treaty may need to be revised with the aim of ensuring the effectiveness of the mechanisms and the institutions of the Community.

The objectives of the Union shall be achieved as provided in this Treaty and in accordance with the conditions and the timetable set out therein while respecting **the principle of subsidiarity** as defined in Article 5 of the Treaty **establishing the European Community.**

Treaty of Maastricht 1992

Consolidated version

Article 130r

1. Community policy on the **environment** shall contribute to pursuit of the following objectives:

- preserving, protecting and improving the quality of the environment;
- protecting human health;
- prudent and rational utilisation of natural resources;
- promoting measures at international level to deal with regional or worldwide environmental problems.

2. Community policy on the environment shall aim at a high level of protection taking into account the diversity of situations in the various regions of the Community. It shall be based **on the precautionary principle and on the principles that preventive action should be taken, that environmental damage should as a priority be rectified at source and that the polluter should pay.**

In this context, harmonisation measures answering environmental protection requirements shall include, where appropriate, a safeguard clause allowing Member States to take provisional measures, for non-economic environmental reasons, subject to a Community inspection procedure

3. In preparing its policy on the environment, the Community shall take account of:
- available scientific and technical data;
 - environmental conditions in the various regions of the Community;
 - the potential benefits and costs of action or lack of action;
 - the economic and social development of the Community as a whole and the balanced development of its regions.
4. Within their respective spheres of competence, the Community and the Member States shall cooperate with third countries and with the competent international organisations. The arrangements for Community cooperation may be the subject of agreements between the Community and the third parties concerned, which shall be negotiated and concluded in accordance with Article 300.

The previous subparagraph shall be without prejudice to Member States' competence to negotiate in international bodies and to conclude international agreements

IV. Treaty of Amsterdam. 1998

Consolidated version

ENVIRONMENT

Article 174 (ex Article 130r)

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- preserving, protecting and improving the quality of the environment;
- protecting human health;
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V. Treaty of Nice, 2001

Consolidated version

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- preserving, protecting and improving the quality of the environment;**
- protecting human health;**
- prudent and rational utilisation of natural resources;**
- promoting measures at international level to deal with regional or worldwide environmental problems.**



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The previous subparagraph shall be without prejudice to Member States' competence to negotiate in international bodies and to conclude international agreements

Article 175

1. The European Parliament and the Council, acting in accordance with the ordinary legislative procedure and after consulting the Economic and Social Committee and the Committee of the Regions, shall decide what action is to be taken by the Union in order to achieve the objectives referred to in Article 191.

2. By way of derogation from the decision-making procedure provided for in paragraph 1 and without prejudice to Article 114, the Council acting unanimously in accordance with a special legislative procedure and after consulting the European Parliament, the Economic and Social Committee and the Committee of the Regions, shall adopt:

(a) provisions primarily of a fiscal nature;

(b) measures affecting:

— town and country planning,

— quantitative management of water resources or affecting, directly or indirectly, the availability of those resources,

— land use, with the exception of waste management;

(c) measures significantly affecting a Member State's choice between different energy sources and the general structure of its energy supply.

The Council, acting unanimously on a proposal from the Commission and after consulting the European Parliament, the Economic and Social Committee and the Committee of the Regions, may make the ordinary legislative procedure applicable to the matters referred to in the first subparagraph.

3. General action programmes setting out priority objectives to be attained shall be adopted by the European Parliament and the Council, acting in accordance with the ordinary legislative procedure and after consulting the Economic and Social Committee and the Committee of the Regions.

The measures necessary for the implementation of these programmes shall be adopted under the terms of paragraph 1 or 2, as the case may be.

4. Without prejudice to certain measures adopted by the Union, the Member States shall finance and implement the environment policy.

5. Without prejudice to the principle that the polluter should pay, if a measure based on the provisions of paragraph 1 involves costs deemed disproportionate for the public authorities of a Member State, such measure shall lay down appropriate provisions in the form of:

- temporary derogations, and/or
- financial support from the Cohesion Fund set up pursuant to

Article 177.

Vla. Treaty of Lisbon. 2007.



5. In its relations with the wider world, the Union shall uphold and promote its values and interests and contribute to the protection of its citizens. It shall contribute to peace, security, the sustainable development of the Earth, solidarity and mutual respect among peoples, free and fair trade, eradication of poverty and the protection of human rights, in particular the rights of the child, as well as to the strict observance and the development of international law, including respect for the principles of the United Nations Charter.

VIb. Treaty of Lisbon, 2007.

The Treaty on the functioning of the European Union (Consolidated version)

Article 3

The Union shall have exclusive competence in the following areas:

- (a) customs union;
- (b) the establishing of the competition rules necessary for the functioning of the internal market;
- (c) monetary policy for the Member States whose currency is the euro;
- (d) **the conservation of marine biological resources under the common fisheries policy;**
- (e) common commercial policy.

Article 4

1. The Union shall share competence with the Member States where the Treaties confer on it a competence which does not relate to the areas referred to in Articles 3 and 6.

2. Shared competence between the Union and the Member States applies in the following principal areas:
 - (a) internal market;
 - (b) social policy, for the aspects defined in this Treaty;
 - (c) economic, social and territorial cohesion;
 - (d) agriculture and fisheries, excluding the conservation of marine biological resources;
 - (e) environment;
 - (f) consumer protection;
 - (g) transport;
 - (h) trans-European networks;
 - (i) energy;

Article 11

Environmental protection requirements must be integrated into the definition and implementation of the Union's policies and activities, in particular with a view to promoting sustainable development.

Articles 191 to 193: Environment

The Evolution of Environmental Law and Sustainability Policy in the European Union

VII. Fundamental EU Rights Charter, Done at Nice 2000. Version of XII 2007 (European Parliament)

Article 37

Environmental protection

A high level of environmental protection and the improvement of the quality of the environment must be integrated into the policies of the Union and ensured in accordance with the principle of sustainable development.

Article 38

Consumer protection

Union policies shall ensure a high level of consumer protection.



Article 41 Right to good administration

1. Every person has the right to have his or her affairs handled impartially, fairly and within a reasonable time by the institutions, bodies, offices and agencies of the Union
2. This right includes:
 - (a) the right of every person to be heard, before any individual measure which would affect him or her adversely is taken;
 - (b) the right of every person to have access to his or her file, while respecting the legitimate interests of confidentiality and of professional and business secrecy;
 - (c) the obligation of the administration to give reasons for its decisions.
3. Every person has the right to have the Union make good any damage caused by its institutions or by its servants in the performance of their duties, in accordance with the general principles common to the laws of the Member States.
4. Every person may write to the institutions of the Union in one of the languages of the Treaties and must have an answer in the same language.

Article 42

Right of access to documents

Any citizen of the Union, and any natural or legal person residing or having its registered office in a Member State, has a right of access to documents of the institutions, bodies, offices and agencies of the Union, whatever their medium.

Article 51

Field of application

2. The Charter does not extend the field of application of Union law beyond the powers of the Union or establish any new power or task for the Union, or modify powers and tasks as defined in the Treaties.

Article 52

Scope and interpretation of rights and principles

4. In so far as this Charter recognises fundamental rights as they result from the constitutional traditions common to the Member States, those rights shall be interpreted in harmony with those traditions.

VIII. Rules and regulations from EU – Art. 288 TFEU

- The Treaties (The Treaty on European Union, the Treaty on the Functioning of the European Union), are primary Law. The Charter of Fundamental Rights, (done at Nice, 7-XII 2000), version 12-XII-2007, Strassbourg, European Parliament, has the same legal value as the Treaties.

Regulations and Directives are secondary Law.

- The Liberties. Free movement of goods, persons, services and capitals are fundamental principles of the European Union.

- Direct application by Member States – Regulations

European Regulations have to be applied directly by Member States.

- To be transposed by Member States – Directives

- European Law has primacy-supremacy. In the case of conflict with Member States prior Law, has to be applied European Union Law. European Law doesn't repeal internal Law of the Member States but avoids his application.

- Implementation of EU Law by Member States

There is not an European Administration, *strictu sensu* (with exception: Commission and services of Institutions, Bodies Agencies and offices). Administrations of Member States are european Administration.



IX. The most regulated sectors

Water

Waste

Noise

Information rights

Citizen participation rights

IPPC: integral pollution preventive control

Environmental Impact Assessment

Consumer protection

Public health

X. THE IMPLEMENTATION IN SPAIN OF THE LANDFILL AND END-OF-LIVE VEHICLES DIRECTIVES

1. The implementation of the two Directives in Spain is only partially satisfactory.

It should be remembered that, according to article 149.1.23 of Constitution of the Kingdom of Spain, competence in environmental matters belongs to the State with regard to the general principles of environmental protection. Detailed regulation and implementation is left to the Autonomous Communities. The Constitutions of the different Communities might provide otherwise, even if at present there is virtual uniformity in autonomous legislative competence with regard to environmental matters.

2. The Spanish (central) legislator delayed the adoption of the measures implementing the various Directives on waste until 1997 and 1998. In particular Act 11/1997 of 24 April on packing and packing material wastes (modified by the Act 66/1997, inserting specific or other aspects of Directive 94/62 EEC of the European Parliament and Council), introduced the European regime on packing and packing material waste. The Act 10/1998 of 21 April on waste attempted to establish a general underlying regime applicable to the entire Spanish territory.

Some Autonomous regions, such as Catalonia, anticipated the central regulation on waste and, considering the content of the European Directives to be fundamental, regulated this area several years in advance, a power consistently considered by the Constitutional Court in conformity with the Constitution.

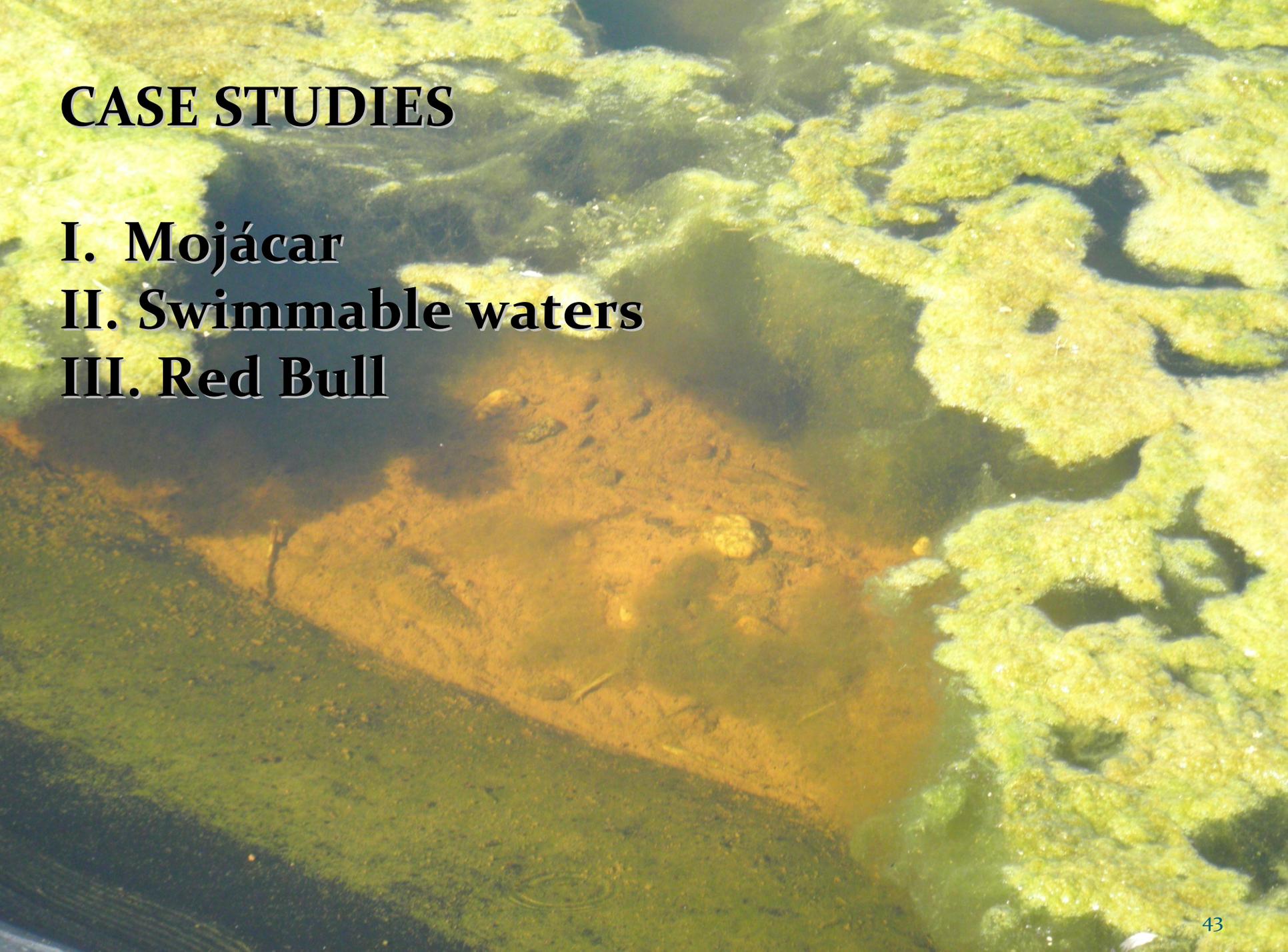
Let us examine the case of Catalonia. Catalan Law 6/1993 of 15 July, which regulates waste, establishes a general regime applicable in Catalonia, using as a reference the requirements contained in the European legislation on waste, and implicitly implementing, in advance, a significant part of the content of Directive 94/62/EC relative to packing and packing waste. The result was that, once a Waste Register for Catalonia approved by means of the Regulation 94/62/EC of 9 January, Catalonia complied with the conditions imposed by the European Community in the Directives on waste (in particular those that introduced classifications) and by European measures relating to packing and packing waste.

3. With regard to implementation of Directive 2000/53/EEC on the end-of-life vehicles, the government of Catalonia approved the Regulation 217/1999 of 27th July regarding the management of end-of-life vehicles, which integrated the Regulation 93/1999 of 6 April on waste management procedures. Both provisions refer to the programs established by the Catalan Act 6/1993, which regulated waste; and, obviously, to the (State) Act 10/1998 of 21 April on waste.

Catalan legislation on the management of end-of-life vehicles, even though prior to the adoption of Directive 2000/53, adapted itself to the provisions of the latter, accepting all of the technical norms contained in it. The reason is set forth in the Catalan Act 6/1993 on waste, whose articles 5 and 7 already established a selective collection of vehicles and the re-utilization of materials by manufacturers and commercial companies. In brief, what the State Law on waste decided six years later, as well as the Directive on end life vehicles, had already been law in Catalonia since 1993, and, in particular through the creation of a Catalonia Waste Register.

Catalan legislation regarding end-of-life vehicles refers not only to vehicles to be scrapped, but also to abandoned vehicles. It imposes an obligation of the holders or owners to demonstrate that they have delivered the vehicle to authorized agents, prior to delivering the license plates. The part regarding the obligations of authorized agents, the specific conditions required of recovery centers, infractions, and the relative sanctions, adopted the technical norms indicated by AENOR.

4. The State also failed to act when new provisions on traffic and car circulation were introduced. The end-of-life vehicles regulation should have been the responsibility of the State, requiring that the collection of license plates and cancellation from the fiscal registers and circulation were subsequent to the delivery to the vehicle to a waste center. However, such rule was not established. In others words, which regard to Catalonia, Catalan legislation on the elimination of waste and the management of end-of-life vehicles provides a satisfactory solution, also on a technological level, complying with and exceeding the quality levels required by the European Directives.



CASE STUDIES

I. Mojácar

II. Swimmable waters

III. Red Bull

SPAIN

Cases I and II



Case Study I
Judgment of the Court, 8 September
2005
C-416/02



“Nitrates from agricultural sources”

The Commission, supported by United Kingdom and Northern Ireland, brought action vs the Kingdom of Spain



Leitmotivs of the judgment

- Meaning of waste
- Environmental impact
- Protection of groundwater
- Urban wastewater treatment
- Protection of waters ... from agricultural nitrates



The Commission sought a declaration of the Court of Justice (C416/02) that the Kingdom of Spain:

- Failed to adopt measures under Council Directive 75/442 CEE and 91/156 CEE



- Failed to adopt measures to ensure that waste from the pig farm located in “El Pago de la Media Legua” is disposed of or recovered

- The farm operated without the permit required



- Failed to carry out an impact assessment prior to the construction or modification



- Failed to carry out the requisite hydrogeological studies in the area affected by the pollution (Directive 80/68 CEE)



- Not ensured that urban wastewater from the agglomeration of Vera is subjected to such treatment as required by the Directive 91/271



-Failed to designate the Rambla de Mojácar as a vulnerable zone contrary to the Council Directive 91/676 CEE concerning the protection of waters against pollution caused by nitrates from agricultural sources



The problem was located in Andalucía





**Spanish National law: adapted to the
Directive 91/676 through Royal Decree
261/1996:**



**Waste originating from agricultural
holdings and livestock farms consisting
of faecal matter and other non-harmful
substances...**

The Junta de Andalucía (Regional Government) designated the zones within the Autonomous Community vulnerable to water pollution caused by nitrates from agricultural sources, but not included the Rambla de Mojácar

The judgment of the Court of Justice stated*
that



* Against the action

- The Commission has not established in what way Spanish Authorities, in the conduct of that new authorization procedure infringed Directive 85/337 (EIA Directive)

- The Spanish Authorities has in fact complied with the rule requiring an environmental assessment
- The Spanish Authorities carried out an inspection of the pig farm in question and decided, in view particularly of the unfavorable results of that inspection that it was not possible to authorize that establishment

But the judgment of the Court of Justice stated* also that



* Considering the action

- Spain failed to ensure that urban waste water from the agglomeration of Vera is subjected to such treatment as is required by Directive 91/271
- Spain also failed not to designate the Rambla de Mojácar as a vulnerable zone as is required by Directive 91/276

Case Study II

Judgment of the Court 25 November 2003

“Swimmable waters”



Inshore swimmable waters



There was a prior sentence on the same item
(Judgment of the European Court of
Justice (12 February 1998 – Commission vs
Spain)) that Spain did not fulfill

Then, in 2003, the Court :

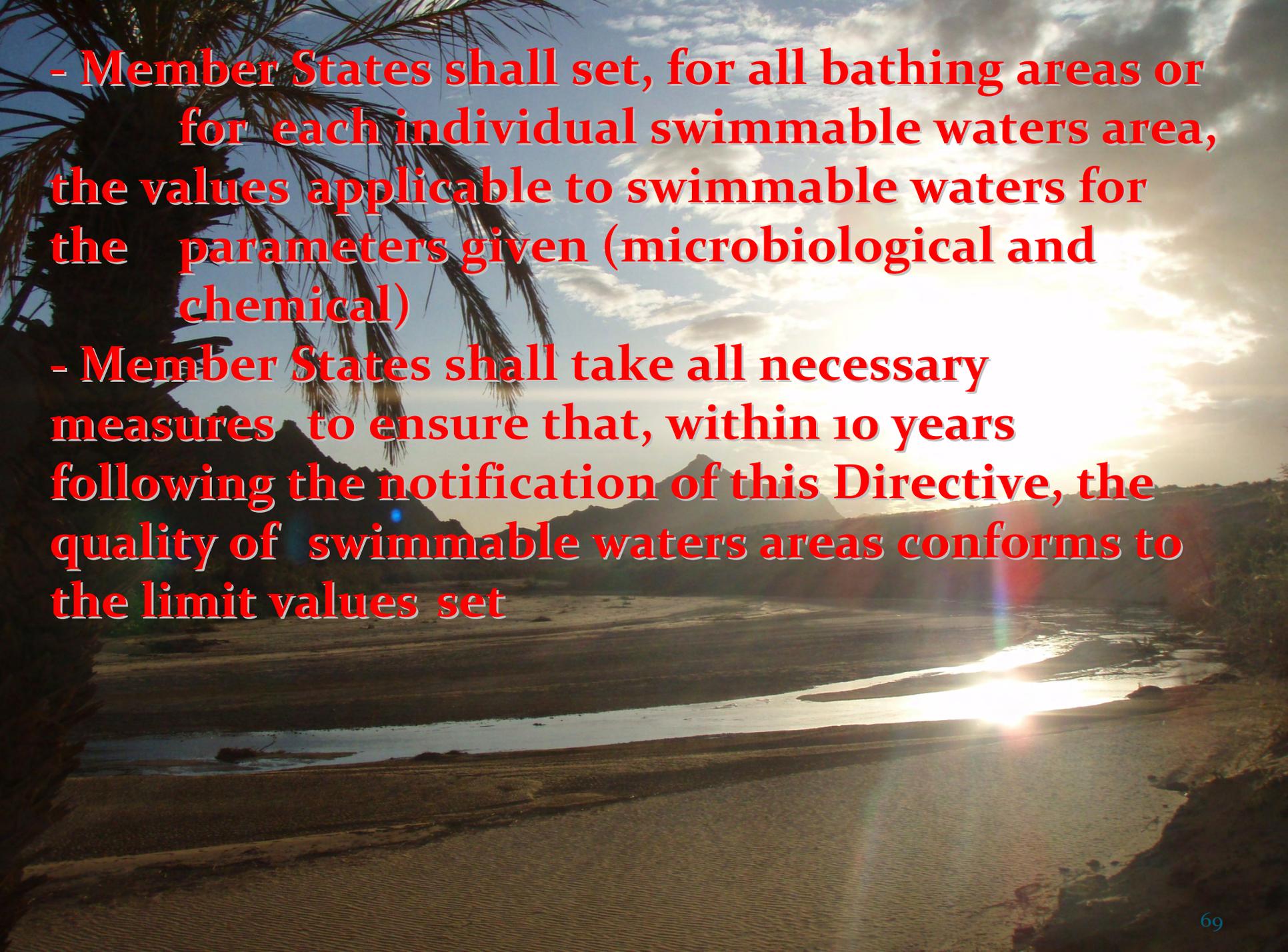
- Declared that Spain has not taken all the measures necessary to comply with the Court's judgment
- Ordered the Kingdom to pay the Commission into the account European Commission on resources a penalty payment of euro 624.150 / year and per 1% of swimmable waters areas in Spanish inshore waters

It was the first case where a coercitive penalty was imposed to a State Member

The Council Directive 76/160/CEE of 8 December 1975,
concerning the **quality of swimmable waters**, stated that:

“quality objectives are to be jointly drawn up fixing the various requirements which an environment must meet inter alia the definition of **parameters for water**, including **swimmable waters**; whereas, in order to attain these quality objectives, the Member states must lay down **limit values** corresponding to certain parameters; whereas **swimmable waters** must be made conform to these values within 10 years following the notification of this Directive; ...”



- 
- Member States shall set, for all bathing areas or for each individual swimmable waters area, the values applicable to swimmable waters for the parameters given (microbiological and chemical)
 - Member States shall take all necessary measures to ensure that, within 10 years following the notification of this Directive, the quality of swimmable waters areas conforms to the limit values set

Following the Act concerning the conditions of accession of the Kingdom of Spain ... the quality of Spanish swimmable waters areas should have conformed to the limit values set by the Directive as from 1 January 1986

From 1993 on, the Member States shall send every year to the Commission a report on their implementation of certain directives relating to the Environment (OJ 1991 L 377, p. 48)





The Commission, considering that the Kingdom of Spain did not comply with the terms stated by the Directive brought the Kingdom of Spain to the Court of Justice

In the case of Commission vs Spain, the Court of Justice declared (12 February 1998) that by falling to take all necessary measures to ensure that the quality of inshore swimmable waters areas conform to the limit values set ...

- the Kingdom of Spain had **failed to fulfill its obligations** and
- had **not taken** all the **measures necessary to comply with the limit values** set in the Directive by **not issuing the necessary adaptation of the internal legislation** to the quality values set by the Directive in which respects to the quality of the **inshore swimmable waters areas**

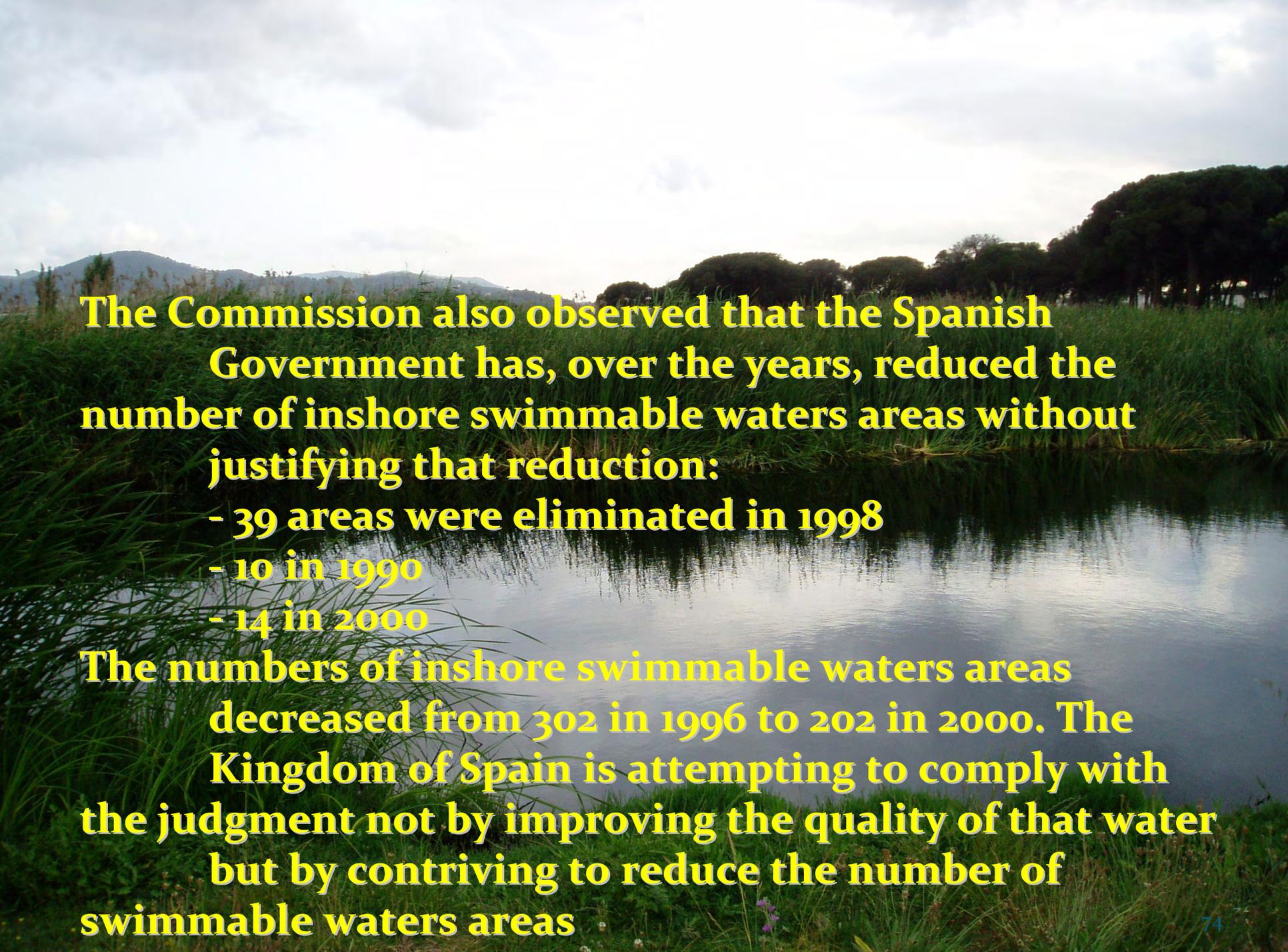


January 2000: the Commission notifies to Spain:

“It is common ground that inshore swimmable waters areas in Spanish territory has not yet being brought into conformity with (the) mandatory values”

Measures not sufficient (1999)

- launch of a study of swimmable waters areas**
- implementation of certain wastewater purification projects**



The Commission also observed that the Spanish Government has, over the years, reduced the number of inshore swimmable waters areas without justifying that reduction:

- 39 areas were eliminated in 1998**
- 10 in 1990**
- 14 in 2000**

The numbers of inshore swimmable waters areas decreased from 302 in 1996 to 202 in 2000. The Kingdom of Spain is attempting to comply with the judgment not by improving the quality of that water but by contriving to reduce the number of swimmable waters areas

A photograph of a river flowing through a lush green landscape. In the background, a concrete dam is visible, with a small structure on top. The river is surrounded by dense vegetation, including tall grasses and wildflowers. The water is clear and reflects the surrounding greenery.

November 25th, 2003 the Court is declaring that :

the Kingdom of Spain had failed again to fulfill its obligations by not taken all the measures necessary to comply with the Court's judgment of 12 February 1998.



The French Republic

Case

III



Red Bull affair

Judgment of the Court 5 February 2004

Case c-24/00

Commission vs French Republic



Red Bull is an energy drink sold by the Austrian Red Bull GmbH. It was created as an adaptation of the Thai energy drink Krating Daeng (which translates as "Red Bull") and introduced in 1987. Based on market share, it is the most popular energy drink in the world.

From the company web

The Court declared:

The French Republic failed to adopt legislation ensuring the free movement and has failed to fulfill its obligations under Art. 30 of the Treaty

- by failing to provide for a simplified procedure for having included on the National list of authorized nutrients those added to foodstuffs for daily consumption and foodstuff intended for particular nutritional uses which are lawfully manufacture and/or marketed in other Member States

- by hindering the marketing in France of the substances L-tartrate and L-carnitine without establishing that the marketing of such foodstuffs entails a real risk for public health

Torre Vieja salt works, Alicante, Spain

Findings of the Court

- A decision to prohibit the marketing of foodstuff, which is in fact the most restrictive obstacle to trade in product lawfully manufactured and marketed in other member states, can be adopted only after an assessment of the risk which could reveal that Scientific Uncertainty persists as regards the existence or extent of real risk to human health

- The risk assessment can not be based on purely hypothetical considerations
- The French Government has not adduced evidence establishing that the application of the national legislation is necessary to protect effectively the public health



MAIN CONSEQUENCE

The French Republic shall modify its own regulations concerning to the raw materials permitted and listed relative to food and foodstuff, for daily consumption fortified with vitamins, minerals and other nutrients

- The restrictions of the French Regulations were measures having equivalent effect to those which hindered the free movement of goods
- **In this way one of the basic principles of the Treaties was infringed**

Anthem of Europe, L. v. Beethoven, 9th symphony, 4th
Movement
Lyrics by F. Schiller

Joy, beautiful sparkle of the gods,

Daughter of Elysium!

We enter, fire-drunk,

Heavenly one, your shrine.

Your magic again binds

What custom has firmly parted.

All men become brothers

Where your tender wing lingers.

(Original in German)