JUDGMENT OF THE COURT (Grand Chamber)

26 April 2005 *

In Case C-494/01,

ACTION under Article 226 EC for failure to fulfil obligations, brought on 20 December 2001,

Commission of the European Communities, represented by R. Wainwright and X. Lewis, acting as Agents, with an address for service in Luxembourg,

applicant,

v

Ireland, represented by D. O'Hagan, acting as Agent, assisted by P. Charleton SC and A. Collins BL, with an address for service in Luxembourg,

defendant,

* Language of the case: English.

THE COURT (Grand Chamber),

composed of V. Skouris, President, P. Jann (Rapporteur), C.W.A. Timmermans and A. Rosas, Presidents of Chambers, J.-P. Puissochet, R. Schintgen, N. Colneric, S. von Bahr, J.N. Cunha Rodrigues, M. Ilešič, J. Malenovský, U. Lõhmus and E. Levits, Judges,

Advocate General: L.A. Geelhoed,
Registrar: L. Hewlett, Principal Administrator,

having regard to the written procedure and further to the hearing on 6 July 2004,

after hearing the Opinion of the Advocate General at the sitting on 23 September 2004,

gives the following

Judgment

1 By its application, the Commission of the European Communities requests the Court to declare that:

— by failing to take all the measures necessary to ensure a correct implementation of the provisions of Articles 4, 5, 8, 9, 10, 12, 13 and 14 of Council Directive

75/442/EEC of 15 July 1975 on waste (OJ 1975 L 194, p. 39), as amended by Council Directive 91/156/EEC of 18 March 1991 (OJ 1991 L 78, p. 32) ('the Directive'), Ireland has failed to comply with its obligations under those provisions;

— by failing to respond completely and satisfactorily to a request for information dated 20 September 1999 in relation to a waste operation at Fermoy, County Cork, Ireland has failed to fulfil the obligations which it has pursuant to Article 10 EC.

Relevant provisions

2 Article 4 of the Directive provides:

'Member States shall take the necessary measures to ensure that waste is recovered or disposed of without endangering human health and without using processes or methods which could harm the environment, and in particular:

— without risk to water, air, soil and plants and animals,

— without causing a nuisance through noise or odours,

— without adversely affecting the countryside or places of special interest.

Member States shall also take the necessary measures to prohibit the abandonment, dumping or uncontrolled disposal of waste.'

3 Article 5 of the Directive provides:

'1. Member States shall take appropriate measures, in cooperation with other Member States where this is necessary or advisable, to establish an integrated and adequate network of disposal installations, taking account of the best available technology not involving excessive costs. The network must enable the Community as a whole to become self-sufficient in waste disposal and the Member States to move towards that aim individually, taking into account geographical circumstances or the need for specialised installations for certain types of waste.

2. The network must also enable waste to be disposed of in one of the nearest appropriate installations, by means of the most appropriate methods and technologies in order to ensure a high level of protection for the environment and public health.'

4 Article 8 of the Directive states:

'Member States shall take the necessary measures to ensure that any holder of waste:

— has it handled by a private or public waste collector or by an undertaking which carries out the operations listed in Annex II A or B, or

— recovers or disposes of it himself in accordance with the provisions of this Directive.'

5 Article 9 of the Directive is worded as follows:

'1. For the purposes of implementing Articles 4, 5 and 7, any establishment or undertaking which carries out the operations specified in Annex II A must obtain a permit from the competent authority referred to in Article 6.

Such permit shall cover:

— the types and quantities of waste,

— the technical requirements,

— the security precautions to be taken,

— the disposal site,

— the treatment method.

2. Permits may be granted for a specified period, they may be renewable, they may be subject to conditions and obligations, or, notably, if the intended method of disposal is unacceptable from the point of view of environmental protection, they may be refused.'

6 Article 10 of the Directive provides:

'For the purposes of implementing Article 4, any establishment or undertaking which carries out the operations referred to in Annex II B must obtain a permit.'

7 Article 12 of the Directive is worded as follows:

'Establishments or undertakings which collect or transport waste on a professional basis or which arrange for the disposal or recovery of waste on behalf of others (dealers or brokers), where not subject to authorisation, shall be registered with the competent authorities.'

8 Article 13 of the Directive provides:

'Establishments or undertakings which carry out the operations referred to in Articles 9 to 12 shall be subject to appropriate periodic inspections by the competent authorities.'

9 Article 14 of the Directive states:

'All establishments or undertakings referred to in Articles 9 and 10 shall:

— keep a record of the quantity, nature, origin, and, where relevant, the destination, frequency of collection, mode of transport and treatment method in respect of the waste referred to in Annex I and the operations referred to in Annex II A or B,

— make this information available, on request, to the competent authorities referred to in Article 6.

Member States may also require producers to comply with the provisions of this Article.'

10 Annexes II A and II B to the Directive respectively list waste disposal operations and waste recovery operations as carried out in practice.

Pre-litigation procedure

11 The Commission received three complaints concerning Ireland. The first related to the dumping of construction and demolition waste on wetlands within the area of the City of Limerick ('Complaint 1997/4705'). The second referred to the storage of

organic waste in lagoons at Ballard, Fermoy, County Cork, and its disposal through landspreading by a private operator lacking a permit ('Complaint 1997/4792'). The third concerned storage of various types of waste at Pembrokestown, Whiterock Hill, County Wexford, by a private operator lacking a permit ('Complaint 1997/4847').

12 On 30 October 1998 the Commission sent a letter of formal notice to Ireland in respect of those complaints. This was followed, on 14 July 1999, by a reasoned opinion, relating only to Complaints 1997/4705 and 1997/4792, which alleged that Ireland had infringed the second paragraph of Article 4 and Articles 9 and 10 of the Directive. Ireland was requested to take the measures necessary to comply with the reasoned opinion within two months following its notification.

13 In its responses of 7 October and 23 November 1999, Ireland denied that it had in any way failed to fulfil its obligations as regards the two complaints referred to in the preceding paragraph.

14 The Commission also received five other complaints concerning Ireland. The first of these raised the operation without a permit of a municipal landfill at Powerstown, County Carlow, since 1975 ('Complaint 1999/4351'). The second related to the dumping of waste (rubble), and the operation without a permit of a private waste treatment facility, in a green area on the Poolbeg Peninsula, Dublin ('Complaint 1999/4801'). The third concerned the operation without a permit of two municipal landfills, one at Tramore and the other at Kilbarry, County Waterford, since 1939 and 1970 respectively, adjoining and/or encroaching upon protected areas ('Complaint 1999/5008'). The fourth related to the use since the 1980s, by a private

operator lacking a permit, of waste facilities in disused quarries at Lea Road and Ballymorris, Portarlington, County Laois ('Complaint 1999/5112'). The fifth concerned the operation, without a permit, of a municipal landfill at Drumnaboden, County Donegal ('Complaint 2000/4408').

15 On the basis of those complaints and the information gathered in the course of investigating them, the Commission sent a letter of formal notice to Ireland on 25 October 2000.

16 The Commission also received four further complaints directed against Ireland, the first relating to the operation, without a permit, of a private waste storage and treatment facility at Cullinagh, Fermoy, County Cork ('Complaint 1999/4478'). The second concerned the depositing of demolition and construction waste by a private operator, since 1990, on an area on the foreshore at Carlingford Lough, Greenore, County Louth ('Complaint 2000/4145'). The third related to general waste collection by unlicensed and unregistered private undertakings which were not regulated, at Bray, County Wicklow ('Complaint 2000/4157'). The fourth concerned the tipping of various types of waste, principally demolition and construction waste, on four wetlands located at Ballynattin, Pickardstown, Ballygunner Bog and Castletown, County Waterford ('Complaint 2000/4633').

17 On 17 April 2001 the Commission sent a fresh letter of formal notice to Ireland referring to those last four complaints and recalling the letter of formal notice of 25 October 2000.

18 In addition, after the Commission had received no response to a request for information dated 20 September 1999 addressed to Ireland in relation to Complaint 1999/4478, on 28 April 2000 the Commission sent it a letter of formal notice alleging a breach of Article 10 EC.

19 On 26 July 2001 the Commission sent to Ireland a reasoned opinion that set out the analysis of the 12 aforementioned complaints, referring to the letters of formal notice of 30 October 1998, 28 April 2000, 25 October 2000 and 17 April 2001 and to the reasoned opinion of 14 July 1999. The Commission alleged that Ireland had failed to fulfil its obligations to take all the measures necessary to ensure a correct implementation of Articles 4, 5, 8, 9, 10, 12, 13 and 14 of the Directive and its obligations resulting from Article 10 EC, and called on it to take the measures necessary to comply with the reasoned opinion within two months of receipt thereof.

20 The Commission also stated that those complaints did not constitute the only cases of non-compliance with the Directive and that it reserved the right to cite other examples in order to illustrate the breaches of a general nature in implementing the provisions of the Directive of which it accuses the Irish authorities.

21 Considering that Ireland had not complied with the reasoned opinions of 14 July 1999 and 26 July 2001, the Commission brought the present action.

Consideration of the action

Breaches of the Directive

The subject-matter of the action, the date as at which it must be determined whether the alleged failures to fulfil obligations have occurred and the admissibility of certain grounds of complaint relied on by the Commission

22 The Commission begins by stating that, following a Treaty infringement procedure initiated against Ireland and the subsequent adoption of the Waste Management

Act, 1996 ('the 1996 Act') — one of the aims of which was to make operations in respect of waste managed by local authorities ('municipal waste') subject to a system of licences issued by the Environmental Protection Agency ('the EPA') — and its implementing regulations, the legal framework for waste management in Ireland has been improved considerably. With the exception of a failure to transpose Article 12 of the Directive, the present proceedings therefore principally seek a finding that the Irish authorities are not complying with their obligations to achieve a certain result because they are not ensuring that the Directive is actually applied.

23 The Commission further explains in this regard that this action seeks a declaration of failure to fulfil obligations not only on account of the shortcomings noted in the specific situations covered by the 12 complaints referred to in paragraphs 11, 14 and 16 of this judgment but also, and more fundamentally, on account of the general and persistent nature of the deficiencies which characterise the actual application of the Directive in Ireland, of which the specific situations mentioned in those complaints simply constitute examples. It is a matter of ensuring the full recognition and implementation in Ireland of the seamless chain of responsibility for waste which the Directive establishes, by requiring: holders of waste to discard it through specified operators; the operators collecting or dealing with the waste to be subject to a permit or registration system and to inspection; and the abandonment, dumping or uncontrolled disposal of waste to be prohibited.

24 In the Commission's submission, the fact that the action is thus intended in particular to raise systemic deficient administrative practices means that it is justified in adducing further evidence to prove the existence of those practices and their continuation over a long period. Likewise, the fact that in certain of the specific cases raised by the Commission a permit was finally issued or certain steps completed before the period laid down in the reasoned opinion expired is not decisive for the existence of a failure to fulfil obligations that is linked to the existence of such practices.

25 The Irish Government contends that the 12 complaints to which the Commission refers in the reasoned opinion must delimit the subject-matter of the proceedings. Other facts or complaints not notified to Ireland during the pre-litigation procedure may not be relied on in support of the action, and the Commission is not permitted to draw general conclusions from the examination of specific complaints by presuming an alleged systemic failure on Ireland's part.

26 Furthermore, the question whether Ireland might have failed to fulfil its obligations must be determined by reference to the situation prevailing on the date upon which the two-month period set in the reasoned opinion of 26 July 2001 expired.

27 As to those various submissions, it should be stated, first, in relation to the subject-matter of the present proceedings, that, without prejudice to the Commission's obligation to satisfy in each and every case the burden of proof which it bears, in principle nothing prevents the Commission from seeking in parallel a finding that provisions of a directive have not been complied with by reason of the conduct of a Member State's authorities with regard to particular specifically identified situations and a finding that those provisions have not been complied with because its authorities have adopted a general practice contrary thereto, which the particular situations illustrate where appropriate.

28 It is accepted that an administrative practice can be the subject-matter of an action for failure to fulfil obligations when it is, to some degree, of a consistent and general nature (see, in particular, Case C-387/99 *Commission* v *Germany* [2004] ECR I-3751, paragraph 42, and the case-law cited).

29 Second, as is clear from settled case-law, the question whether a Member State has failed to fulfil its obligations must be determined by reference to the situation prevailing in the Member State at the end of the period laid down in the reasoned opinion (see, inter alia, Case C-446/01 *Commission* v *Spain* [2003] ECR I-6053, paragraph 15).

30 In the present case, although Ireland is alleged not to have complied with the reasoned opinions of 14 July 1999 and 26 July 2001 within the periods laid down by them, the Commission has stated in reply to a written question from the Court that the second of those opinions was intended to consolidate and gather together all the information and arguments previously exchanged between the parties and that, consequently, it replaced the first opinion.

31 In those circumstances, the failures to fulfil obligations alleged by the Commission must be assessed in light of the situation prevailing at the end of the two-month period laid down in the reasoned opinion of 26 July 2001 ('the 2001 reasoned opinion').

32 Admittedly, it follows that the Court cannot declare that Ireland has failed to fulfil its obligations under the Directive with regard to a given particular situation where it is established that, on the date of expiry of that period, the deficiencies alleged by the Commission had been remedied. On the other hand, as the Commission rightly submits, in so far as the action also seeks a declaration that there has been a general failure on the part of the competent national authorities to fulfil obligations, the fact that the deficiencies pointed out in one or other case have been remedied does not necessarily mean that the general and continuous approach of those authorities, to which such specific deficiencies would testify where appropriate, has come to an end.

33 Third, in the context of proceedings for failure to fulfil obligations, the purpose of the pre-litigation phase is to give the Member State concerned an opportunity, on the one hand, to comply with its obligations under Community law and, on the other, to avail itself of its right to defend itself against the charges formulated by the Commission (see, inter alia, Case C-350/02 *Commission* v *Netherlands* [2004] ECR I-6213, paragraph 18, and the case-law cited).

34 The proper conduct of that procedure constitutes an essential guarantee required by the EC Treaty not only in order to protect the rights of the Member State concerned, but also so as to ensure that any contentious procedure will have a clearly defined dispute as its subject-matter (see, inter alia, *Commission* v *Netherlands*, cited above, paragraph 19, and the case-law cited).

35 The subject-matter of proceedings under Article 226 EC is accordingly delimited by the pre-litigation procedure governed by that provision. The Commission's reasoned opinion and the application must be based on the same grounds and pleas, with the result that the Court cannot examine a ground of complaint which was not formulated in the reasoned opinion, which for its part must contain a cogent and detailed exposition of the reasons which led the Commission to the conclusion that the Member State concerned had failed to fulfil one of its obligations under the Treaty (see, inter alia, *Commission* v *Netherlands*, paragraph 20, and the case-law cited).

36 It indeed follows that the Commission cannot seek a declaration of a specific failure by Ireland to fulfil its obligations under the Directive regarding a particular factual situation that was not referred to in the course of the pre-litigation procedure. A specific ground of complaint of that kind must necessarily have been relied on at the pre-litigation stage, in order that the Member State concerned has the opportunity to remedy the particular situation complained of or to avail itself of its right to defend itself in that regard; such defence may in particular prompt the Commission to withdraw the ground of complaint and/or help to delimit the subject-matter of the dispute that the Court will subsequently have before it.

37 On the other hand, in so far as the action seeks to raise a failure of a general nature to comply with the Directive's provisions, concerning in particular the Irish authorities' systemic and consistent tolerance of situations not in accordance with the Directive, the production of additional evidence intended, at the stage of proceedings before the Court, to support the proposition that the failure thus alleged is general and consistent cannot be ruled out in principle.

38 It should be noted that in its application the Commission may clarify its initial grounds of complaint provided, however, that it does not alter the subject-matter of the dispute. In producing fresh evidence intended to illustrate the grounds of complaint set out in its reasoned opinion, which allege a failure of a general nature to comply with the provisions of a directive, the Commission does not alter the subject-matter of the dispute (see, by analogy, the judgment of 12 October 2004 in Case C-328/02 *Commission* v *Greece*, not published in the ECR, paragraphs 32 and 36).

39 In the present case, contrary to the Irish Government's submissions, although they were not referred to during the pre-litigation procedure the facts relating to massive illegal dumping of, on occasions hazardous, waste in County Wicklow, of which the Commission became aware after issue of the reasoned opinion, could therefore properly be mentioned by the latter in support of its application for the purpose of illustrating the failures of a general nature to fulfil obligations raised by it.

The burden of proof

40 The Irish Government has raised in defence numerous objections relating to the burden of proof. In particular it has cast doubt on the truth of numerous facts alleged by the Commission on the conclusion of the investigation of the 12 complaints which were received by it. The Irish Government has also contended that the Commission is not justified in drawing general conclusions from the examination of those specific complaints by presuming alleged systemic failures by Ireland to fulfil its obligations.

41 It is to be remembered that in proceedings under Article 226 EC for failure to fulfil obligations it is incumbent upon the Commission to prove the allegation that the obligation has not been fulfilled. It is the Commission's responsibility to place before the Court the information needed to enable the Court to establish that the

obligation has not been fulfilled, and in so doing the Commission may not rely on any presumption (see, in particular, Case 96/81 *Commission* v *Netherlands* [1982] ECR 1791, paragraph 6, and Case C-408/97 *Commission* v *Netherlands* [2000] ECR I-6417, paragraph 15).

42 However, the Member States are required, under Article 10 EC, to facilitate the achievement of the Commission's tasks, which consist in particular, pursuant to Article 211 EC, in ensuring that the provisions of the Treaty and the measures taken by the institutions pursuant thereto are applied (Case 96/81 *Commission* v *Netherlands*, paragraph 7, and Case C-408/97 *Commission* v *Netherlands*, paragraph 16).

43 In this context, account should be taken of the fact that, where it is a question of checking that the national provisions intended to ensure effective implementation of the directive are applied correctly in practice, the Commission which, as the Advocate General has observed in point 53 of his Opinion, does not have investigative powers of its own in the matter, is largely reliant on the information provided by any complainants and by the Member State concerned (see, by analogy, Case C-408/97 *Commission* v *Netherlands*, paragraph 17).

44 It follows in particular that, where the Commission has adduced sufficient evidence of certain matters in the territory of the defendant Member State, it is incumbent on the latter to challenge in substance and in detail the information produced and the consequences flowing therefrom (see to this effect Case C-365/97 *Commission* v *Italy* [1999] ECR I-7773 ('*San Rocco*'), paragraphs 84 and 86).

45 In such circumstances, it is indeed primarily for the national authorities to conduct the necessary on-the-spot investigations, in a spirit of genuine cooperation and mindful of each Member State's duty, recalled in paragraph 42 of the present judgment, to facilitate the general task of the Commission (*San Rocco*, paragraph 85).

46 Thus, where the Commission relies on detailed complaints revealing repeated failures to comply with the provisions of the directive, it is incumbent on the Member State to contest specifically the facts alleged in those complaints (see, by analogy, Case 272/86 *Commission* v *Greece* [1988] ECR 4875, paragraph 19).

47 Likewise, where the Commission has adduced sufficient evidence to show that a Member State's authorities have developed a repeated and persistent practice which is contrary to the provisions of a directive, it is incumbent on that Member State to challenge in substance and in detail the information produced and the consequences flowing therefrom (see, by analogy, Case 272/86 *Commission* v *Greece*, cited above, paragraph 21, and *San Rocco*, paragraphs 84 and 86).

The facts relating to the complaints examined by the Commission

48 As is apparent from paragraphs 11 to 21 of the present judgment, the Commission bases its action in particular on the alleged conduct of the Irish authorities in various specific situations examined following 12 complaints from private parties. Since the factual circumstances upon which the Commission seeks to rely have been disputed by Ireland, it should be ascertained whether they have been proved to the required legal standard.

— Dumping of waste in Limerick (Complaint 1997/4705)

49 The Commission submits that in 1997 Limerick Corporation, a local authority with responsibility for applying waste legislation, tolerated dumping of construction and demolition waste on wetlands in Limerick. It further observes that the EPA stated in

a letter of 23 January 1998 that depositing of that kind amounted to recovery operations not requiring authorisation. In addition, the waste was not entirely removed, and dumping continued on the wetlands and other nearby areas of wetland.

50 The Commission relies in this regard on Complaint 1997/4705. Apart from the letter from the EPA, it adduces photographic negatives from the complainant showing mounds of debris amidst wetland vegetation, newspaper articles indicating that the instances of unauthorised dumping of waste on the wetlands in Limerick were common knowledge and photographs from complainants taken in 2002 testifying to the presence of demolition and construction waste on those wetlands.

51 The Irish Government replies that, according to Limerick Corporation, just three lorry loads were, in error, deposited in October 1997 on the area covered by Complaint 1997/4705 and that the waste was removed within hours of its deposit. The facts alleged are not proved, particularly at the date upon which the period set in the 2001 reasoned opinion expired. As to the more recent deposits on the area covered by that complaint, the Irish Government states that they are small in amount and affirms that the waste will be removed promptly. The other deposits alleged by the Commission are not material to the present proceedings and occurred for infilling and development purposes. Moreover, as regards an infilling proposal with a view to developing sporting facilities, the EPA's position was consistent with Irish legislation which, until 20 May 1998, did not require a licence for waste recovery.

52 In this instance, the Court holds that, given the detailed nature of Complaint 1997/4705 and the evidence adduced by the Commission, the Irish Government cannot, as is apparent from paragraphs 42 to 47 of this judgment, take refuge behind

the otherwise unsupported assertions of Limerick Corporation or simply contend that the facts alleged are not proved or that the waste deposits in question occurred in implementation of a controlled policy of recovery or infrastructure development, without challenging in substance and in detail the information produced by the Commission or supporting its own allegations with specific evidence.

53 Contrary to what the Irish Government suggests, the body of evidence adduced by the Commission is in addition relevant for the purpose of substantiating the ground of complaint set out by it relating to the local authorities' persistent tolerance of the unauthorised deposit of waste on the wetlands situated in Limerick.

54 In light of the foregoing, the Court finds that the evidence mentioned in paragraph 50 of this judgment shows to the required legal standard that in 1997 the competent local authority tolerated unauthorised depositing of construction and demolition waste on wetlands in Limerick, that such depositing continued in the area in question, in particular in the course of the present proceedings, and that other depositing also took place on two further wetlands very close by. It is also proved that the EPA stated in a letter sent on 23 January 1998 to Limerick Corporation that, under the Irish legislation in force at that time, such depositing did not require authorisation if it occurred for the purpose of recovery.

55 The fact that the wetlands in question are of particular ecological interest is not denied by the Irish Government and is sufficiently clear from the case-file, especially from the fact that classification of one of them has been envisaged as a special area of conservation under Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora (OJ 1992 L 206, p. 7). It is apparent, moreover, from photographs and newspaper articles adduced by the Commission and from a letter dated 8 December 1997 from the Department of Arts, Heritage, Gaeltacht and the Islands that the wetlands in question have been badly damaged.

— Unauthorised operations involving the storage of waste in lagoons and its landspreading, at Ballard, Fermoy, County Cork (Complaint 1997/4792)

56 The Commission submits that Cork County Council, the competent waste management authority, has since 1990 tolerated the carrying out by a private operator without a permit of operations involving the storage on a la ,e scale of organic waste in lagoons at Ballard and the disposal of that waste by landspreading, failing to ensure that those operations ceased and were punished. Furthermore, the facilities in question were constructed without the necessary planning consent and the latter was granted in 1998, making it easier for those operations to continue.

57 In its defence the Irish Government concedes that the storage and landspreading operations carried out by the operator concerned required possession of a permit. It considers, however, that the conduct of Cork County Council was appropriate. That authority established in April 1992 that the activities complained of had ceased. When they recommenced, it took steps in 1996 to ensure that no further material was deposited in the lagoons in question. After finding none the less, on an inspection carried out in August 2001, that the storage activity had recommenced, Cork County Council commenced legal proceedings which resulted, in March 2002, in the defendant's being found guilty and fined EUR 1 800. All illegal depositing has ceased since then and the waste still present was removed.

58 In its reply, the Commission maintains that the operations in question never ceased. It adduces for this purpose various letters, including a number from Cork County Council itself, which show that waste was deposited at Ballard until June 2002 at least. Furthermore, the only penalty imposed on the operator responsible was for failure to provide information to the council.

59 Without contesting this last allegation made by the Commission, the Irish Government indicates in its rejoinder lodged at the Court Registry on 10 January 2003 that Cork County Council is considering the question of bringing legal proceedings against the operator in question. The removal of the waste still on the site is moreover imminent.

60 In light of the foregoing, the Court holds that it is proved to the required legal standard that substantial unauthorised operations involving the storage of waste in lagoons and/or its landspreading were pursued on the initiative of a private operator in Ballard, County Cork, between 1990 and June 2002 at least, without the competent authorities taking appropriate measures to bring those operations to an end and without the operations giving rise to penalties. Nor is it disputed that the installations necessary for such operations were retained although they did not have the necessary planning consent and that in 1998 the competent authorities issued such a consent authorising the retention of such installations.

— Unauthorised waste storage operations at Pembrokestown, Whiterock Hill, County Wexford (Complaint 1997/4847)

61 The Commission contends that a private operator stored waste between 1995 and 2001 on a site at Pembrokestown, notwithstanding three district court decisions in 1996 and 1997 successively fining him, on conviction in this regard, IEP 100, and then IEP 400 twice, a fact which testifies in particular to the inadequacy of the penalties imposed. Furthermore, those operations exposed local residents to substantial nuisances of which Wexford County Council was aware, as is apparent in particular from the terms of its decision of 23 February 1996 refusing an application for planning consent relating to the site concerned, a decision which is adduced by the Commission.

62 In the Irish Government's submission, such fines were consistent with the European Communities (Waste) Regulations, 1979, in force at the material time, which provided for the imposition, on summary conviction, of a fine not exceeding IEP 600 and/or a term of imprisonment not exceeding six months. Since the operations were of an intermittent nature, Wexford County Council also considered it inappropriate to obtain an injunction against the person concerned to prevent them. Finally, a licence dated 24 January 2001, which the Irish Government adduces, was granted in respect of the operations.

63 In this instance, the Court finds that the material in the file shows to the required legal standard that between 1995 and January 2001 waste storage operations took place on a private site located at Pembrokestown in conditions prejudicial to the adjacent residents in the absence of any authorisation, without the competent authorities taking appropriate measures to bring those operations to an end and without the operations being subject to penalties sufficiently effective to exert a deterrent effect. It is also proved that a licence as provided for by the 1996 Act was granted by the EPA to the operator of this site on 24 January 2001.

— Unauthorised operation of the Powerstown municipal landfill, County Carlow (Complaint 1999/4351)

64 The Commission submits in its application that the Powerstown municipal landfill, in County Carlow, has been operating without a permit since 1975. Although a licence application was submitted on 27 February 1998 on the basis of the 1996 Act, a decision had not yet been issued on 23 February 2000, while the facility had continued to operate since the submission of the licence application.

65 The Irish Government does not contest those allegations but adduces a licence relating to the landfill granted by the EPA on 24 March 2000.

— Unauthorised operation of a waste storage and treatment facility at Cullinagh, Fermoy, County Cork (Complaint 1999/4478)

66 The Commission submits that Cork County Council has since 1991 tolerated the running by a private operator without a permit of a waste storage and treatment facility on a site located at Cullinagh, in an area with groundwater, failing to ensure that those operations ceased and were punished, despite the successive refusals issued in respect of the applications for planning consent made by that operator between 1991 and 1994.

67 The Irish Government states that in April 2002 a decision was adopted authorising the concern to carry out recovery operations at the rate of 6 500 tonnes of waste per annum. This decision is not, however, adduced. In the Irish Government's submission, no groundwater contamination from the facility concerned has been ascertained and the licence requires a procedure for monitoring and assessing groundwater quality to be implemented. The planning consents were granted by Cork County Council, then set aside by the appeal body.

68 The Court accordingly holds that it is proved to the required legal standard that a waste storage and treatment site was operated without a permit, at any rate between 1991 and April 2002, in an area where a risk of groundwater contamination could not be ruled out, without the competent authorities taking appropriate measures to bring its operation to an end and without its operation giving rise to penalties. As is

apparent from the preceding paragraph, the Irish Government acknowledges, moreover, that the competent authorities granted planning consents for those facilities at a time when the facilities did not have the permit prescribed by the Directive.

— Dumping of waste and unauthorised operation of waste treatment facilities on the Poolbeg Pensinsula, Dublin (Complaint 1999/4801)

69 The Commission submits, first, that the competent authorities of the city of Dublin tolerated, from 1997, dumping of construction and demolition waste in a green area on the Poolbeg Peninsula, failing to ensure that the dumping ceased or was punished or that the waste concerned was removed. Second, those authorities tolerated the operation on the peninsula, without a permit, of two treatment facilities for metallic waste, failing to ensure that such operation ceased or was punished, and even went so far as to have Community financial assistance granted to the facilities in question.

70 With regard to the two aforementioned facilities, the Irish Government stated, in its letters of 12 December 2000 and 26 June 2001 responding to requests for information sent to it by the Commission, that, following permit applications submitted on 23 September and 15 October 1998 respectively, the facilities were granted permits by decisions dated 3 August 2000 and 1 March 2001. As to the Community aid, the Irish Government states in its defence that it was granted by mistake.

71 The Irish Government further contends that there was only one past instance of fly-tipping and that the site was remediated before the period set in the 2001 reasoned opinion expired, without there being any evidence of environmental damage on the site. Since the fly-tippers were not identified, they could not be punished.

72 In its reply, the Commission maintains that it is clear from detailed information received from complainants who were in regular contact with Dublin Port Company, which has responsibility for the Poolbeg Peninsula, and with Dublin Corporation, which is the competent waste management authority, and from photographs which it adduces that dumping of waste continued until the beginning of 2000 and that the site concerned was not in fact cleaned up by the Irish authorities until the end of that year.

73 In its rejoinder, the Irish Government contests those allegations made by the Commission and submits that the photographs adduced by it are insufficient to support them.

74 The Court finds, first, that in its letters of 12 December 2000 and 26 June 2001 the Irish Government acknowledged that significant dumping of rubble took place in the past in the area at issue and stated that the rubble was levelled to serve as foundation material for a platform for pipe assembly operations. Second, the complainants' assertions and the photographs adduced by the Commission are sufficiently precise and detailed in nature for the Irish Government to be unable, as pointed out in paragraphs 42 to 47 of this judgment, merely to contend that the facts alleged are not proved without challenging in substance and in detail the information produced by the Commission or supporting its own allegations with specific evidence.

75 In light of the foregoing, the Court holds that it is proved to the required legal standard that the competent authorities of the city of Dublin tolerated, from 1997 up until 2000, the unauthorised presence of rubble dumped in a green area on the Poolbeg Peninsula, failing to ensure that dumping ceased or that the waste in question was removed. Those authorities also tolerated the operation on the Poolbeg Peninsula without a permit of two waste treatment facilities until 3 August 2000 and

1 March 2001 respectively when the permit applications relating to them were granted, failing to ensure that their operation was brought to an end or penalties imposed on the operator. Those facilities also received Community financial assistance.

— Unauthorised operation of municipal landfills at Tramore and Kilbarry, County Waterford (Complaint 1999/5008)

76 According to the documents and pleadings produced by the parties, the Tramore landfill, which has been in operation since the 1930s, adjoins a special protection area within the meaning of Council Directive 79/409/EEC of 2 April 1979 on the conservation of wild birds (OJ 1979 L 103, p. 1) and falls partially within an area proposed as a natural heritage area and as a special area of conservation within the meaning of Directive 92/43. It is also apparent from those documents that the licence application in respect of this landfill, which was not submitted until 30 September 1998, was granted by the EPA on 25 September 2001.

77 The Kilbarry landfill, which has been in operation since the beginning of the 1970s, adjoins wetlands proposed as a natural heritage area and encroaches on a former area of scientific interest. The licence application in respect of the landfill, submitted on 30 September 1997, was granted by the EPA on 19 October 2001.

78 According to the Commission, the unauthorised operation of these two landfills has, moreover, caused significant environmental harm and nuisance, consisting in particular in encroachments upon the adjacent wetlands and a consequent reduction in their area.

79 In its letter sent to the Commission on 30 November 2000 in response to a request by the latter for information, the Irish Government maintains that the reduction in area of the wetlands adjoining the Kilbarry landfill occurred 10 years earlier. As to the alleged adverse environmental effects, the Irish Government denies that the Tramore landfill has had any significant adverse effect on the adjacent special protection area, but acknowledges on the other hand that the EPA has expressed concerns with regard to the Kilbarry landfill.

80 In its defence, the Irish Government also explains that, following amendment of the boundary of the proposed special area of conservation at Tramore by Dúchas, the authority responsible for nature conservation, the landfill no longer encroaches upon that area. It further submits that all the harmful effects on the environment and, in particular, on the various environmentally sensitive areas adjoining the landfills in question, are now dealt with in an appropriate manner in the licences of 25 September and 19 October 2001.

81 The Court finds that the Irish Government admits the encroachment of the Kilbarry landfill on the surrounding wetlands and the consequent reduction in their area.

82 As to the Tramore landfill, it is apparent from a letter sent on 29 May 2000 by the Irish authority responsible for nature conservation that it blames Waterford County Council both for the landfill's encroachments upon the proposed special area of conservation and for the damage caused to the latter. A draft conservation plan adopted by the same authority on 20 July 2000, which the Commission also adduces, confirms that encroachments upon the proposed special area of conservation have taken place since 1993, causing serious impairment to it and damage in the areas adjacent to the landfill. Photographs from May 2001, adduced by the Commission, also show waste adjacent to the boundary of the landfill and encroaching upon the surrounding natural environment.

83 Finally, certain findings made in the inspection reports written in the course of the licensing procedures for the two landfills and in the licences themselves and various specific conditions imposed by the licences attest that significant harm to the environment, in particular, the aqueous environment, has been caused by the landfills' operation. Due compliance with the various conditions imposed in those licences also involves adopting implementing measures and carrying out works, so that mere issue of the licences is not capable of ensuring that the environmental harm resulting from the operation of the two landfills in question is immediately brought to an end. Moreover, this finding is confirmed in particular by the annual environmental report drawn up in October 2002 by Waterford County Council, in accordance with the requirements of the licence relating to the Tramore landfill.

84 In light of the foregoing, the Court holds that it is proved to the required legal standard that the Tramore and Kilbarry municipal landfills, whose establishment dates back to the 1930s and 1970s, continued to operate without authorisation until 25 September and 19 October 2001 respectively, when the EPA granted the licence applications concerning them, submitted on 30 September 1998 and 30 September 1997 respectively. It is also proved to the required legal standard that those landfills encroached upon sensitive wetlands of particular ecological interest, causing in particular impairment of the wetlands and a reduction in their area, and that they were at the origin of significant environmental pollution of various kinds which, as is clear from the preceding paragraph, has not been entirely brought to an end merely because the aforementioned licences have been issued.

— Unauthorised operation of waste facilities at Lea Road and Ballymorris, County Laois (Complaint 1999/5112)

85 The Commission submits that the competent local authorities have tolerated the running, since the 1980s, by a private operator without a permit of waste facilities which are located in disused quarries at Lea Road and Ballymorris, near

Portarlington, County Laois, and are both within the catchment of the River Barrow which has an important aquifer, those authorities having failed to ensure that the activities ceased or that they were punished.

86 After acknowledging, in a letter sent to the Commission on 28 November 2000, that waste management activities had indeed taken place on those sites without the required authorisation, the Irish Government states, however, in its defence that Laois County Council confirmed to it in September 2001 that all activity had meanwhile ceased on the Lea Road site. As regards the Ballymorris site, it states that in February 2002 the EPA issued a proposed decision refusing the licence sought.

87 In its reply, the Commission contests that the waste management operations carried out at Lea Road have ceased. It adduces in this connection various reports drawn up following site inspections, including one dated 6 June 2002 accompanied by photographic negatives attesting that significant waste management and storage activities continued on the site, at least until that date. The Commission likewise adduces various inspection reports and photographic negatives demonstrating the extent of the waste management operations carried out at Ballymorris.

88 In its rejoinder, lodged at the Court Registry on 10 January 2003, the Irish Government states that a decision on the licence application relating to the Ballymorris site is expected in March 2003.

89 In light of the foregoing, the Court holds that it is proved to the required legal standard that the competent Irish authorities have tolerated the running, since the 1980s, by a private operator without a permit of two significant waste facilities which are located in disused quarries at Lea Road and Ballymorris, near Portarlington,

County Laois, and are both within the catchment of the River Barrow which has an important aquifer, those authorities having failed to ensure that the activities ceased or that they were punished. In the case of the Lea Road site, that situation persisted at least until 6 June 2002 and, in the case of the Ballymorris site, until 10 January 2003.

— Operation without a permit of the municipal landfills at Drumnaboden, Muckish and Glenalla, County Donegal (Complaint 2000/4408)

90 It is common ground between the parties that, after a licence application was submitted on 30 September 1998 pursuant to the 1996 Act in respect of the municipal landfill at Drumnaboden, the closure of the landfill was ordered by decision of Donegal County Council dated 26 April 1999. That authority was accordingly prompted to decide to continue operation of the municipal landfills at Muckish and Glenalla, which had closed shortly before 1 March 1999, the deadline before which an application for a licence under the 1996 Act had to be made in respect of every existing municipal landfill. Consequently, waste management activities resumed in the latter two landfills, whereas the licence applications concerning them were not submitted until 5 October 1999. Notwithstanding the lateness of those applications, the EPA made no objections to continuance of those landfills' operation.

— Unauthorised dumping and depositing of waste at Carlingford Lough, Greenore, County Louth (Complaint 2000/4145)

91 The Commission submits that from 1990 the Irish authorities tolerated unauthorised dumping of construction and demolition waste on an area on the foreshore at Carlingford Lough, Greenore, County Louth, failing to ensure that those operations ceased or were punished or that the waste was removed.

92 The Irish Government indicated in a letter sent to the Commission on 9 April 2001 that the Department of the Marine and Natural Resources had considered that the question of that waste would be resolved in the context of a local development proposal under examination. In addition, the Department of the Environment and Local Government forwarded to the Commission a copy of a report dated 23 October 2000 in which the waste deposited at Carlingford Lough is identified as builders' rubble.

93 In its defence, the Irish Government contends, however, that this last assessment is incorrect. Following trial excavations carried out on the site in January 2002 at the request of Louth County Council, it was apparent that the material present on the site comprised boulders and stone excavated from a quarry and deposited at that location by the undertaking Greenore Port for the purpose of land reclamation, so that there was no waste disposal. Furthermore, it is now proposed to use that material in the construction of a seawall.

94 Here, the Court finds that it is apparent from the evidence adduced by the Commission, which includes, in particular, letters from complainants and from the Department of the Marine and Natural Resources, two inspection reports drawn up by officials of that ministry following site inspections in 1993 and 1997 and various photographs taken in January 2002, that the waste in question does comprise demolition rubble, in particular reinforced concrete and scrap iron. That evidence also shows to the required legal standard that from 1990 such demolition and construction waste was in fact dumped and kept by a private operator lacking a permit on an area on the foreshore at Carlingford Lough and that that situation was tolerated at least until January 2002 by the competent Irish authorities, who failed to ensure that those activities ceased and were punished or that the waste was removed.

— Waste collection by unlicensed and unregistered private undertakings at Bray, County Wicklow (Complaint 2000/4157)

95 The Commission submits that in January 2000 Bray Urban District Council decided to cease domestic waste collection and invited residents to turn to private collectors, a list of whom was sent to them. According to the Commission, the private collectors were not registered or authorised for the purposes of Article 12 of the Directive, because that provision had not been transposed into Irish law.

96 In its letter sent to the Commission on 4 October 2000, the Irish Government states, first, that the municipality of Bray maintained records regarding all waste collectors operating in its area. Second, it informs the Commission of the future adoption of regulations under which waste collection in Ireland will be subject to a permit system.

— Unauthorised tipping of waste on sites at Ballynattin, Pickardstown, Ballygunner Bog and Castletown, County Waterford (Complaint 2000/4633)

97 In its application, the Commission contends that Waterford County Council tolerated, at least until December 2001, unauthorised tipping of various types of waste, mainly construction and demolition rubble, on various wetlands in the county, including the sites at Ballynattin, Pickardstown, Ballygunner Bog and Castletown, failing to ensure that those activities ceased or were punished or that the waste was removed.

98 In its defence, lodged at the Court on 19 August 2002, the Irish Government maintains that, on the date upon which the period laid down in the 2001 reasoned opinion expired, all dumping had ceased on the Pickardstown, Castletown and Ballygunner Bog sites. Furthermore, steps had been taken by Waterford County Council to secure the removal of the waste tipped on the first two sites. The third had in the meantime been grassed over and, according to the council, removal of the waste would not enable the wetland concerned to be restored to its original state. The Irish Government states in addition that in January 2002 proceedings were brought with regard to the Ballynattin site, after a notice served by Waterford County Council in June 2000 requiring all depositing to cease and the waste to be removed had no effect.

99 In support of its reply, the Commission adduces photographic negatives from September 2002 which reveal the presence of demolition waste on the Ballynattin, Pickardstown and Castletown sites and a building in the course of construction on the first of those three sites.

100 In its rejoinder, lodged at the Court on 10 January 2003, the Irish Government submits that the dumping of waste at Ballynattin, Pickardstown, Ballygunner Bog and Castletown occurred on areas respectively representing 0.1, 0.8, 0.4 and 1 hectare, that is to say 0.15%, 27%, 6% and 17% of the wetlands concerned. In the case of the Ballynattin site, a circuit court order had required removal of the waste and demolition of the building under construction, and an application to have the site owner committed to prison was made before the circuit court in December 2002. The Irish Government further states that, having recently been informed of fresh dumping of waste on the Castletown site, Waterford County Council expressed its intention to require the removal of the waste deposited on this site and the Pickardstown site.

101 In light of the foregoing, the Court holds that it is proved to the required legal standard that waste, mainly construction and demolition waste, has been deposited on various wetlands in County Waterford, at the Ballynattin, Pickardstown,

Ballygunner Bog and Castletown sites, on the initiative of private operators, and that on the date upon which the period set in the 2001 reasoned opinion expired, the competent local authority had not ensured that that dumping had ceased and been punished or that the waste concerned had been removed, a situation which moreover continued to obtain after the present action was brought.

Breach of Articles 9 and 10 of the Directive

— Arguments of the parties

102 The Commission submits that, as provided by Articles 9 and 10 of the Directive, all waste operations have had to take place under a permit since 1977. Such permits, which are issued for the purposes of implementing Article 4 of the Directive and must specify the conditions to be complied with by those operations in order to preserve the environment, absolutely must be such that they are granted in advance.

103 According to the Commission, numerous municipal waste operations are, however, carried out without a permit in Ireland, as is attested, for example, by the cases of the Powerstown and Tramore and Kilbarry landfills, the respective subjects of Complaints 1999/4351 and 1999/5008.

104 Furthermore, the time taken to process licence applications submitted under the 1996 Act is excessive as regards existing facilities, whilst the latter continue systematically to operate during the licensing procedure. The reply sent by the Irish Government to the Commission on 23 February 2000 indicates that, out of 137

licence applications of this type, 102 remained pending as at 2 February 2000. In the case of the Muckish and Glenalla landfills, which are referred to in Complaint 2000/4408, the EPA even tolerated continuance of their operation without a licence application having been submitted within the time-limit laid down by the 1996 Act.

105 In the Commission's submission, Ireland also fails to fulfil its obligations by not subjecting municipal landfills that closed before that time-limit expired to the permit procedure provided for in Article 9 of the Directive.

106 As regards waste dealt with by private operators, the Commission contends that the Irish authorities, at various levels, also tolerate the continuation over long periods of unauthorised operations in a very large number of places in Ireland, failing to ensure that they cease or are punished, as is apparent in particular from investigation of Complaints 1997/4705, 1997/4792, 1999/4478, 1999/4801, 1999/5112, 2000/4145 and 2000/4633. The few penalties that are imposed continue, moreover, to have no deterrent effect at all, as is shown in particular by examination of Complaint 1997/4847. Unscrupulous operators are thus encouraged, on making a simple financial calculation, to continue their illegal activities, while their competitors who comply with the Directive's requirements are penalised.

107 Where applications are made for a permit or planning consent that relate to existing unlawful facilities, the competent Irish authorities furthermore allow the activities concerned to continue, the authorisation finally granted covering the earlier breaches in such cases, as is shown by examination, in particular, of Complaints 1997/4792, 1999/4478, 1999/4801, 1999/5112 and 2000/4145. In the case covered by Complaint 1997/4705, the EPA even accepted that infilling on wetlands was equivalent to recovery and that, in those circumstances, no permit was required under national law.

108 The Irish Government submits in defence, with regard to operations relating to municipal waste, that at the end of September 2001 only 14 operational municipal landfills were still to be licensed and that the situation was entirely regularised on 29 November 1992, the date on which the final licence was issued. The time taken to process the applications is normal, given the wave of simultaneous applications relating to existing facilities, the complexity of the application files and the cumbersomeness of the licensing procedure. The case of the Glenalla and Muckish landfills is exceptional.

109 In addition, Article 9 of the Directive does not require that a facility that closed before expiry of the statutory period within which a licence application had to be submitted be retroactively subject to authorisation.

110 As regards waste dealt with by the private sector, the Irish Government disputes that there is a general tendency on the part of the Irish authorities to tolerate unauthorised operations. Thus, between May 1998 and August 2002, 651 applications were submitted for permits in respect of existing or proposed activities and 384 permits were issued.

111 Furthermore, the 1996 Act provides for the imposition of appropriate fines and terms of imprisonment, and infringements of that Act do give rise to penalties. In its defence, lodged at the Court on 19 August 2002, the Irish Government submits that, according to information which it does not adduce but has been communicated to it by 33 of the 34 competent local authorities, since May 1996 more than 930 notices have been issued requiring the cessation of unauthorised activity and removal of the waste concerned to an authorised facility and 76 notices requiring other action have been issued, while those authorities have completed 111 prosecutions since 1998 and 84 are in progress. The EPA has brought 14 prosecutions under the 1996 Act.

112 The courts have also given judgment against the defendant in various cases. In support of this contention, the Irish Government adduces a High Court judgment of 31 July 2002 ordering the defendants to remediate a site in County Wicklow on which hazardous hospital waste had been illegally landfilled. It also relies on a judgment delivered by Naas District Court, imposing three terms of imprisonment for unlawful holding of waste.

113 As regards the specific cases raised in the complaints sent to the Commission, the Irish Government disputes, in so far as the facts are relevant to the present proceedings, that the Irish authorities have not been active in dealing with them. Furthermore, the Directive does not prevent recovery operations which do not cause any significant environmental damage from continuing during the permit procedure. As to the EPA's letter of 20 March 1998, it simply reflected Irish law as it stood at the time, since waste recovery activities were subject to authorisation only under the Waste Management (Licensing) (Amendment) Regulations, 1998, which entered into force on 19 May 1998.

— Findings of the Court

114 A preliminary point to note is that in Ireland municipal waste was not subject to a permit system until the 1996 Act and its implementing regulations were adopted. As regards waste managed by private operators, certain statements on the part of the Irish Government suggest that its disposal has been subject to such a system since 1980, while its recovery has been since 1998 only.

115 As is apparent from paragraphs 22 and 23 of this judgment, the action seeks, however, a declaration that, on the date upon which the two-month period set in the 2001 reasoned opinion expired, Ireland was not complying with its obligations under Articles 9 and 10 of the Directive, that is to say to ensure that all waste operations actually take place under a permit.

116 In this regard, it should be observed at the outset that, in accordance with the third paragraph of Article 249 EC, a directive is binding, as to the result to be achieved, upon each Member State to which it is addressed. In the present instance, Articles 9 and 10 of the Directive impose on the Member States obligations formulated in clear and unequivocal terms to achieve a certain result, under which undertakings or establishments which carry out waste disposal operations or waste recovery operations in those States must hold a permit. It follows that a Member State has complied with its obligations under those provisions only if, in addition to the correct transposition of the provisions into domestic law, the operators concerned have the permit required (see, by analogy, in relation to the prior authorisation required to operate incineration plants referred to in Article 2 of Council Directive 89/369/EEC of 8 June 1989 on the prevention of air pollution from new municipal waste incineration plants (OJ 1989 L 163, p. 32), Case C-139/00 *Commission* v *Spain* [2002] ECR I-6407, paragraph 27).

117 As the Advocate General has observed in points 27 to 29 of his Opinion, the Member States therefore have the task of making sure that the permit system set up is actually applied and complied with, in particular by conducting appropriate checks for that purpose and ensuring that operations carried out without a permit are actually brought to an end and punished.

118 Furthermore, the permit systems referred to in Articles 9 and 10 of the Directive are intended, as is apparent from the very wording of those provisions, to enable Article 4 of the Directive to be implemented correctly, in particular by ensuring that disposal and recovery operations carried out under such permits comply with the

various requirements set by Article 4. For this purpose, the permits must contain a number of details and conditions, as is moreover expressly laid down in Article 9 of the Directive in relation to disposal operations. It follows that the authorisation processes referred to in Articles 9 and 10 must necessarily be such that they precede all disposal or recovery operations (see, to this effect, Case C-230/00 *Commission* v *Belgium* [2001] ECR I-4591, paragraph 16). Contrary to the Irish Government's assertions, mere submission of a permit application cannot therefore have the effect of making such operations consistent with the requirements of those provisions.

119 In this regard, the Irish Government's argument that the implementation in practice of a permit system introduced by national legislation requires a transitional period during which existing facilities must be able to remain operational cannot succeed in the present proceedings.

120 As provided in Article 13 of Directive 75/442, the Member States were required to bring into force the measures needed in order to comply with that directive within 24 months of its notification. Articles 9 and 10 of the Directive replaced Article 8 of Directive 75/442 and, with a view to continuity of the pre-existing obligations, strengthened the latter, which already provided for a permit system for facilities at which waste was treated, stored or tipped (see to this effect, in particular, *San Rocco*, paragraph 37).

121 The Irish Government therefore had the task of initiating in good time the procedures necessary for transposing into national law, initially, Article 8 of Directive 75/442 and, subsequently, Articles 9 and 10 of the Directive, so that those procedures were completed within the time-limits prescribed by the directives and the obligations formulated in clear and unequivocal terms in those provisions to

achieve a certain result, namely that the operations concerned be carried out only under the requisite permits, were met. In so far as the measures adopted by Ireland to transpose the directives were belated, they cannot be relied on to justify the failure to fulfil obligations (see, by analogy, Case C-60/01 *Commission* v *France* [2002] ECR I-5679, paragraphs 33, 37 and 39).

122 With the benefit of those introductory points of clarification, it must be stated that, as regards municipal landfills, it is apparent from paragraph 108 of the present judgment that, on the Irish Government's own admission, on the date upon which the period set in the 2001 reasoned opinion expired, 14 operational landfills did not have a licence.

123 The Irish Government likewise admits that, when that period expired, it was the systematic practice of the Irish authorities to allow existing facilities to continue to operate during the period from the date on which the licence application was submitted until the date of the decision taken after examination of the application. As is apparent from paragraph 84 of this judgment, that was in particular true of the Tramore and Kilbarry landfills.

124 It is also apparent from various documents submitted to the Court that, at the time, the periods elapsing in practice before such existing facilities were granted or refused a licence were, taken as a whole, quite considerable; the Irish Government itself acknowledged that those periods were a matter for concern in its letter sent to the Commission on 30 November 2000.

125 An article entitled 'Waste Licensing 1997-2002: Lessons from the Application process' published in 2002 in the *Irish Planning and Environmental Law Journal*, which the Irish Government adduces, thus refers to an average duration of 808 days

for the procedure for considering licence applications. It is apparent from paragraph 84 of this judgment that licences relating to the Tramore and Kilbarry municipal landfills, whose establishment nevertheless dates back to the 1930s and 1970s, were issued only on conclusion of procedures lasting 36 and 48 months respectively, although those landfills were the source of significant environmental pollution and of harm to sites of particular ecological interest.

126 According to that article, the main causes of such slowness are the extremely high number of applications dating from the same time relating to existing sites that were often poorly located and subject to little monitoring, and clearly insufficient staff numbers at the EPA. As the Advocate General has observed in point 75 of his Opinion, where a Member State has been failing for some 20 years to fulfil its obligation to achieve the result prescribed in Article 9 of the Directive, it is incumbent upon it to do everything to remedy that failure as rapidly as possible.

127 It follows from all of the foregoing that, on the date upon which the period set in the 2001 reasoned opinion expired, Ireland had not yet met its obligation, by which it had been bound since 1977, to ensure that all municipal landfills hold the requisite permit. The failure to fulfil obligations, which is the result, all at once, of extremely belated transposition of Article 9 of the Directive, of systematically refraining from requiring existing unauthorised activities to cease while the licensing procedure took place, and of a lack of appropriate measures for ensuring that facilities were promptly made subject to the domestic system finally set up, was as at that date both general and persistent in nature.

128 As to the municipal landfills which closed down before expiry of the period laid down for submission of a licence application under the 1996 Act and its implementing regulations, suffice it to state that the Commission has not claimed that that legislation transposed the Directive incorrectly because it was not laid down that such landfills had to be subject to authorisation. As is clear from

paragraph 22 of this judgment, the Commission has, on the contrary, stressed both during the pre-litigation procedure and before the Court that, with the exception of Article 12 of the Directive, its action was intended to complain not of a failure to transpose the Directive but of deficiencies in the actual implementation of the national provisions adopted for the purposes of such transposition. In those circumstances, the Commission cannot seek, in the present action, a declaration that Ireland has failed to fulfil its obligations because its administrative authorities did not, in the context of application of the 1996 Act and its implementing regulations which do not envisage such a possibility, make such closed-down landfills subject to the permit procedure provided for in Article 9 of the Directive.

129 As regards the handling of waste by private operators, the Court holds that, as is apparent from the findings made in paragraphs 60, 63, 68, 75, 89, 94 and 101 of this judgment, a number of Irish local authorities have displayed tolerance towards unauthorised operations relating to significant quantities of waste in numerous places in Ireland, often over very long periods, failing to take appropriate measures to ensure that such operations ceased and were effectively punished and to prevent their recurrence.

130 It is also apparent from those findings that this approach was still being displayed on the date upon which the period set in the 2001 reasoned opinion expired.

131 First, as is apparent from paragraphs 118 and 119 of this judgment, the fact that a permit application was, in some cases, submitted in respect of an existing facility does not in any way permit the view to be taken, contrary to the practice followed by the Irish authorities, that the requirements of Article 9 or 10 of the Directive were met or that the activities in question could be allowed to continue during the permit procedure.

132 Second, as the Commission rightly submits, the circumstance that in two of the specific situations examined, covered by paragraphs 63 and 75 of this judgment, a permit was finally issued before the period set in the 2001 reasoned opinion expired affects neither the fact that no penalty was imposed for the past in respect of the unauthorised operations in question nor the finding that, at the time under consideration, there was a generalised tendency in Ireland on the part of the competent local authorities to tolerate situations in which those provisions were not complied with.

133 This tolerant approach is indicative of a large-scale administrative problem, as the Advocate General has observed in point 121 of his Opinion, and it was sufficiently general and long-lasting to enable the conclusion to be drawn that a practice attributable to the Irish authorities existed consisting in not ensuring a correct implementation of Articles 9 and 10 of the Directive.

134 This assessment is, moreover, borne out by various documents adduced by the Commission. In particular, it is apparent from an especially detailed analytical and statistical study, entitled 'Strategic Review & Outlook for Waste Management Capacity and the Impact on the Irish Economy', of July 2002, that on the date upon which the period set in the 2001 reasoned opinion expired the Irish network of waste disposal installations was close to saturation point and that this situation was accompanied by the appearance of a high number of illegal dumps and deposits. The same finding is made in a document entitled 'National Waste Management Strategy', submitted to the Irish Government in January 2002 by the Institution of the Engineers of Ireland, which points out that hundreds if not thousands of illegal dumps are scattered across Ireland.

135 As regards County Wicklow in particular, newspaper articles published between 8 December 2001 and 9 April 2002 and a report dated 7 September 2001 from

Wicklow County Council attest inter alia that, around the time when the period set in the 2001 reasoned opinion expired, close to 100 illegal sites were recorded in the county, some of which were of a considerable size and contained hazardous waste originating in particular from hospitals.

136 Since the Commission thus supplied sufficient evidence indicating that the Irish authorities maintained a general and persistent approach of tolerance towards numerous situations betraying a breach of the requirements laid down in Articles 9 and 10 of the Directive, failing to ensure that those situations were in fact brought to an end and that effective penalties were imposed, it was incumbent on Ireland, as is apparent from paragraphs 42 to 47 of this judgment, to challenge in substance and in detail that evidence and the consequences flowing therefrom.

137 It must be held that, here, Ireland did not meet that requirement in merely formulating, otherwise unsupported, general contentions, such as those set out in paragraphs 110 to 112 of this judgment, and adducing a judicial decision which, since it came after the date upon which the period set by the 2001 reasoned opinion expired, cannot, after all, be relevant for the purpose of assessing the conduct of the Irish authorities at that date.

138 Furthermore, in its rejoinder, lodged at the Court on 10 January 2003, the Irish Government itself indicated that it had recently adopted various initiatives with a view to supporting a consistent approach in the application of environmental standards, involving in particular: the provision to local authorities of funding intended to enable them to enforce those standards; making those authorities subject to an environmental management system drawn up by the EPA; a more structured and effective approach with regard to inspections; the drafting of a bill including strengthened environmental provisions; and the creation of a specialist office for this purpose. In an article, which the Commission adduces, published in the *Irish Times* on 14 August 2002, it is likewise reported that the Minister for the

Environment stated that the creation of such an office was one of his priorities given the clear need for stricter and more consistent compliance with waste legislation.

139 It follows from the foregoing and from the finding made in paragraph 127 of this judgment regarding municipal landfills that it is proved to the required legal standard that, as at the date upon which the two-month period set in the 2001 reasoned opinion expired, Ireland was generally and persistently failing to fulfil its obligation to ensure a correct implementation of Articles 9 and 10 of the Directive, so that the Commission's claim in this respect must be upheld.

Breach of Article 12 of the Directive

— Arguments of the parties

140 The Commission contends that the Waste Management (Collection Permit) Regulations, 2001 ('the 2001 Regulations'), of which it was notified on 27 September 2001, transpose Article 12 of the Directive both belatedly and unsatisfactorily. The 2001 Regulations set 30 November 2001 as the deadline for submitting permit applications. Provided that the permit application is submitted before that date, the operators concerned are, moreover, authorised to pursue their activities until the procedure has been completed. This belated transposition had the effect of excluding undertakings collecting and transporting waste from any requirement for a permit or registration, as is shown in particular by the facts raised in Complaint 2000/4157.

141 In the Irish Government's submission, the 2001 Regulations transpose Article 12 of the Directive correctly and brought the failure to fulfil obligations to an end. As to the transitional measures of which the Commission complains, the Irish Government maintains that submission of a permit application is at least equivalent to registration for the purposes of Article 12, a concept which can in fact be understood as a mere formal notification to the authority, without a need to satisfy prior conditions. Nor does the specific case referred to by the Commission betray a failure by Ireland to fulfil its obligations.

— Findings of the Court

142 Article 12 of the Directive provides in particular that establishments or undertakings which collect or transport waste on a professional basis are to be registered with the competent authorities where they are not subject to authorisation.

143 The Irish Government does not contest the Commission's assertion that the permit system belatedly implemented by the 2001 Regulations provides that, from 30 November 2001, waste collection will be carried out in accordance with the requirements of a permit issued by the local authority and that any permit application relating to existing activities is to have been submitted before that date.

144 Accordingly, on the date upon which the two-month period set in the 2001 reasoned opinion expired, possession of a permit or registration was not yet compulsory for waste collection operations. Furthermore, even if all the operators concerned

submitted a permit application pursuant to the 2001 Regulations before that date, which has not been established by the Irish Government, the submission of such an application cannot, contrary to its submissions, be taken as equivalent to registration for the purposes of Article 12 of the Directive and, consequently, satisfy the requirements of that provision. Article 12 requires the Member States to choose a permit system or a registration procedure and Ireland did not opt for the second approach.

145 It follows from the foregoing that the Commission's claim must be upheld inasmuch as it seeks a declaration that Ireland did not correctly transpose Article 12 of the Directive.

Breach of Article 5 of the Directive

— Arguments of the parties

146 The Commission submits that Ireland has not taken appropriate measures to establish an integrated and adequate network of waste disposal installations, since numerous installations operate without a permit, giving rise moreover to harm to the environment as attested, for example, by the case of the Tramore and Kilbarry landfills which are referred to in Complaint 1999/5008.

147 The inadequacy of the Irish disposal network is also clear from the fact that it has reached saturation point, a fact which has indeed contributed to the appearance of illegal waste dumping on a large scale.

148 The Irish Government denies any breach of Article 5 of the Directive. First, the Commission has not established that there was not a permit system in compliance with Article 9 of the Directive on the date upon which the period set in the 2001 reasoned opinion expired. Second, inasmuch as the term 'adequate' may be interpreted as referring to sufficient available space to meet a Member State's current disposal requirements, the various documents adduced by the Commission to demonstrate an alleged lack of disposal capacity in Ireland are not convincing. The Commission has in particular not established that waste could not be disposed of because of insufficient landfill capacity, and the fact that certain landfills are coming close to closure is in no way unusual. The Commission also fails to take account of factors such as the possibility of sharing disposal capacity between local authorities or of extending existing landfills, proposals for new landfills that are in the course of being examined or the development of recovery infrastructure.

— Findings of the Court

149 The establishment of an integrated and adequate network of disposal installations, taking account of the best available technology not involving excessive costs, the network having to enable waste to be disposed of in one of the nearest appropriate installations, in accordance with Article 5 of the Directive, is among the objectives pursued by the Directive (Joined Cases C-53/02 and C-217/02 *Commune de Braine-le-Château and Others* [2004] ECR I-3251, paragraph 33).

150 As provided in the first subparagraph of Article 9(1) of the Directive, it is 'for the purposes of implementing Articles 4, 5 and 7' of the Directive that any establishment or undertaking which carries out disposal operations must obtain a permit. This phrase means that implementation of Article 5 of the Directive is meant to be achieved in particular by issuing individual permits (see, to this effect, *Commune de Braine-le-Château*, cited above, paragraphs 40, 41 and 43).

151 However, as is apparent from paragraph 139 of this judgment, as at the date upon which the two-month period set in the 2001 reasoned opinion expired, Ireland was generally and persistently failing to fulfil its obligation to ensure a correct implementation of Article 9 of the Directive by allowing a large number of waste disposal installations to operate without a permit.

152 As the Commission rightly contends, this circumstance is sufficient to conclude that as at that date Ireland was not complying with the obligations laid down in Article 5 of the Directive.

153 As is apparent from paragraphs 118, 149 and 150 of this judgment, the permit system provided for in Article 9 of the Directive is intended to ensure that waste disposal operations are consonant with the various objectives pursued by the Directive. For this purpose, permits must, as is clear from the very wording of that provision, contain a number of requirements relating in particular to the types and quantities of waste, the technical requirements, the security precautions to be taken, the disposal site and the treatment method.

154 In conjunction with the management plans referred to in Article 7 of the Directive, the requirements which must appear in individual permits therefore manifestly

constitute an essential condition for the establishment, in accordance with Article 5 of the Directive, of an integrated and adequate network of disposal installations taking account, as Article 5 provides, in particular of the best available technology not involving excessive costs and of geographical circumstances or the need for specialised installations for certain types of waste, while enabling disposal in one of the nearest appropriate installations, by means of the most appropriate methods and technologies in order to ensure a high level of protection for the environment and public health.

155 Furthermore, it is apparent from the documents adduced by the Commission, in particular the report referred to in point 92 of the Advocate General's Opinion and the July 2002 study mentioned in paragraph 134 of this judgment, that, on the date upon which the period set in the 2001 reasoned opinion expired, the Irish network of disposal installations, taken as a whole, was close to saturation point and was not sufficient to absorb the waste produced in that Member State. It is also evident from those documents that this situation was accompanied by the appearance of a high number of illegal dumps and deposits across the whole country.

156 The precise and detailed information contained in those various documents has not been challenged in substance and in detail by Ireland which has merely cast doubt, in very general terms, on its evidential value, accordingly not satisfying the requirements noted in paragraphs 42 to 47 of this judgment.

157 In those circumstances, it must be found that, on the date upon which the period set in the 2001 reasoned opinion expired, Ireland had failed to take appropriate measures to introduce an integrated and adequate network of disposal installations which, as is clear from Article 5 of the Directive, must be such as to enable the

Community as a whole to become self-sufficient in waste disposal and the Member States to move towards that aim individually.

158 It follows from all of the foregoing that the Commission's claim alleging breach of Article 5 of the Directive must be upheld.

Breach of Article 4 of the Directive

— Arguments of the parties

159 The Commission submits that the lengthy absence of an operational permit system in compliance with Articles 9 and 10 of the Directive is sufficient in itself to establish that Ireland has not taken the measures required to ensure the recovery or disposal of waste without endangering human health and without using processes or methods which could harm the environment, as it was obliged to do pursuant to the first paragraph of Article 4 of the Directive.

160 Since the latter provision must be interpreted in accordance with the precautionary and preventive principles, actual harm is not required for it to be breached. In the present case, as is apparent in particular from the investigation of Complaints 1997/4705, 1997/4792, 1999/4801, 1999/5008, 2000/4408, 2000/4145 and 2000/4633, the illegal operations raised in them in fact caused numerous instances of degradation of sites of particular interest, and actual damage to the environment,

without Ireland taking the necessary remedial measures, in particular by ensuring that the sites were restored and that the waste illegally deposited on them was appropriately disposed of or recovered.

161 Furthermore, Ireland has not complied with its obligation to prohibit the dumping or uncontrolled disposal of waste, under the second paragraph of Article 4 of the Directive.

162 The Irish Government submits with regard to the first paragraph of Article 4 of the Directive that the Commission has established neither the absence of a permit system in compliance with Article 9 of the Directive on the date upon which the period set in the 2001 reasoned opinion expired nor that actual environmental harm attributable to the Irish authorities has occurred. Furthermore, the Directive does not prohibit authorisation of landfilling activity in environmentally sensitive areas.

163 Moreover, the Commission has not established that the Irish authorities have failed to deal with ongoing problems arising from past activities. Appropriate measures are provided for in permits issued in respect of existing sites, such as the Kilbarry and Tramore sites and the Drumnaboden site, respectively referred to in Complaints 1999/5008 and 2000/4408, while the identification and assessment of landfills closed before being subject to authorisation are provided for in section 22(7)(h) of the 1996 Act, so that any remedial measures may take place, account being taken of cost-effectiveness.

164 Furthermore, the Commission has not established an infringement of the second paragraph of Article 4 of the Directive as at the date upon which the period set in the 2001 reasoned opinion expired.

— Findings of the Court

165 It is to be remembered that the obligation to dispose of waste without endangering human health and without harming the environment forms part of the very objectives of Community environmental policy and that Article 4 of the Directive is intended in particular to implement the principle that preventive action should be taken, contained in the second sentence of the first subparagraph of Article 174(2) EC, by virtue of which it is for the Community and the Member States to prevent, reduce and, in so far as is possible, eliminate from the outset the sources of pollution or nuisance by adopting measures of a nature such as to eliminate recognised risks (see Joined Cases C-175/98 and C-177/98 *Lirussi and Bizzaro* [1999] ECR I-6881, paragraph 51, and Case C-387/97 *Commission* v *Greece* [2000] ECR I-5047, paragraph 94).

166 First, Article 4 of the Directive sets out various objectives which the Member States must observe in their performance of the more specific obligations imposed on them by other provisions of the Directive (see, to this effect, Case C-236/92 *Comitato di coordinamento per la difesa della cava and Others* [1994] ECR I-483, paragraph 12).

167 According to the very wording of the first subparagraph of Article 9(1) of the Directive and Article 10 thereof, it is inter alia 'for the purposes of implementing' Article 4 that any establishment or undertaking which carries out waste disposal operations or waste recovery operations must obtain a permit. As has been pointed out in paragraph 150 of the present judgment, this phrase means that implementation of Article 4 is meant to be achieved in particular by issuing such individual permits (*Commune de Braine-le-Château and Others*, paragraphs 41 and 43).

168 Second, even though the first paragraph of Article 4 of the Directive does not specify the actual content of the measures to be taken in order to ensure that waste is disposed of without endangering human health and without harming the environment, that provision, which contains obligations independent of those arising from the other provisions of the Directive, is none the less binding on the Member States as to the objective to be achieved, while leaving to them a margin of discretion in assessing the need for such measures (*San Rocco*, paragraph 67, and Case C-387/97 *Commission* v *Greece*, cited above, paragraphs 55 and 58).

169 While it is true that it is, in principle, not possible to draw the direct inference from the fact that a situation is not in conformity with the objectives laid down in the first paragraph of Article 4 of the Directive that the Member State concerned has necessarily failed to fulfil the obligations under that provision, namely to take the requisite measures to ensure that waste is disposed of without endangering human health and without harming the environment, it is nevertheless undisputed that if that situation persists, in particular if it leads to a significant deterioration in the environment over a protracted period without any action being taken by the competent authorities, that may indicate that the Member States have exceeded the discretion conferred on them by that provision (*San Rocco*, paragraphs 67 and 68).

170 Here it is proved that, as is apparent from paragraph 139 of the present judgment, as at the date upon which the two-month period set in the 2001 reasoned opinion expired, Ireland was generally and persistently failing to fulfil its obligation to ensure a correct implementation of Articles 9 and 10 of the Directive.

171 As the Advocate General has observed in point 98 of his Opinion, that fact is sufficient to establish that Ireland has failed, likewise generally and persistently, to fulfil the requirements of Article 4 of the Directive, a provision closely linked to Articles 9 and 10.

172 First, as pointed out in paragraphs 118 and 167 of this judgment, the permit system referred to in Articles 9 and 10 of the Directive is intended to ensure that waste disposal operations and waste recovery operations carried out under such permits are consonant with the objectives laid down in the first paragraph of Article 4 of the Directive. For this purpose, the permits must necessarily include a number of requirements as is expressly provided by Article 9 of the Directive, a provision which refers in particular, in this connection, to the types and quantities of waste, the technical requirements, the security precautions to be taken, the disposal site and the treatment method. It follows that the scrutiny of such permit applications and the requirements, conditions and obligations which those permits include are among the means of attaining the objectives listed in the first paragraph of Article 4.

173 Second, under the second paragraph of Article 4 of the Directive, the Member States must in particular prohibit all uncontrolled disposal of waste.

174 In the present instance, the failure of a general and persistent nature to fulfil the obligations arising from Article 4 of the Directive, which has thus been established by reason of the infringement of the requirements of Articles 9 and 10 of the Directive, is accompanied in addition, in certain of the specific situations complained of by the Commission, by a failure to fulfil the more specific obligation recalled in paragraphs 168 and 169 of this judgment.

175 It is apparent from paragraphs 54, 55, 84, 94 and 101 of this judgment that, on the date upon which the period set in the 2001 reasoned opinion expired, Ireland had

failed, in the face of factual situations that were inconsistent with the objectives of the first paragraph of Article 4 of the Directive for a lengthy period and led to a significant deterioration in the environment, to take the necessary measures to ensure that the waste in question was disposed of without endangering human health and without harming the environment, so that that Member State has exceeded the discretion conferred on it by that provision.

176 It follows from all of the foregoing that the Commission's claim alleging breach of Article 4 of the Directive is well founded.

Breach of Article 8 of the Directive

— Arguments of the parties

177 In the Commission's submission, Ireland has also infringed Article 8 of the Directive, by failing to ensure that those who hold waste disposed of without a permit have it handled by a private or public waste collector or by an undertaking authorised to carry out disposal or recovery operations, or dispose of or recover it themselves after obtaining a permit in compliance with the Directive's requirements. Specific examples of breaches of this provision are apparent in particular from examination of the facts raised in Complaints 1997/4792, 1999/4801, 1999/5112, 2000/4145 and 2000/4633.

178 The Irish Government contends that the Commission has not proved the alleged failure to fulfil obligations.

— Findings of the Court

179 Article 8 of the Directive, which inter alia implements the principle that preventive action should be taken, provides that the Member States have the task of ensuring that any holder of waste has it handled by a private or public waste collector or by an undertaking which carries out waste disposal and recovery operations, or recovers or disposes of it himself in accordance with the provisions of the Directive (*Lirussi and Bizzaro*, cited above, paragraph 52).

180 First, such obligations are the corollary to the prohibition on the abandonment, dumping or uncontrolled disposal of waste laid down in the second paragraph of Article 4 of the Directive, a provision already found to have been breached by Ireland in paragraph 176 of the present judgment (see Case C-1/03 *Van de Walle and Others* [2004] ECR I-7613, paragraph 56).

181 Second, the operator or owner of an illegal tip must be regarded as the holder of waste for the purposes of Article 8 of the Directive, so that this provision imposes on the Member State concerned the obligation to take, in his regard, the steps necessary to ensure that that waste is handed over to a private or public waste collector or a waste disposal undertaking, unless it is possible for the operator or owner himself to recover or dispose of the waste (see, in particular, *San Rocco*, paragraph 108, the judgment of 9 September 2004 in Case C-383/02 *Commission* v *Italy*, not published in the ECR, paragraphs 40, 42 and 44, and the judgment of 25 November 2004 in Case C-447/03 *Commission* v *Italy*, not published in the ECR, paragraphs 27, 28 and 30).

182 The Court has held, furthermore, that such an obligation is not satisfied where a Member State confines itself to ordering the sequestration of the illegal tip and prosecuting the operator of the tip (*San Rocco*, paragraph 109).

183 In the present case it is clear that, as the Commission rightly submits, on the date upon which the period set in the 2001 reasoned opinion expired, Ireland had not complied with its obligation to ensure a correct implementation of Article 8 of the Directive.

184 As is clear from paragraphs 127 and 139 of this judgment, it is proved that, as at that date, Ireland was generally and persistently failing to fulfil its obligation to ensure a correct implementation of Article 9 of the Directive, by allowing undertakings or establishments lacking the permit prescribed by that provision to pursue waste disposal activities, and not ensuring that those activities were actually brought to an end and punished.

185 It may accordingly be deduced from the finding set out in the preceding paragraph that Ireland has failed to ensure that holders of waste comply with the obligation owed by them to have waste handled by a private or public waste collector or by an undertaking which carries out the operations listed in Annex II A or Annex II B to the Directive, or to recover or dispose of it themselves in accordance with the provisions of the Directive.

186 Furthermore, it is apparent from the findings made in paragraphs 60, 89, 94 and 101 of this judgment that, on the date upon which the period set in the 2001 reasoned opinion expired, Ireland had failed in the various specific cases in question to comply with the obligation recalled in paragraph 181 of this judgment.

187 The Commission's claim alleging breach of Article 8 of the Directive must accordingly be upheld.

Breach of Articles 13 and 14 of the Directive

— Arguments of the parties

188 In the Commission's submission, the failure to comply with Articles 9 and 10 of the Directive inevitably entails infringement of Article 13 thereof, which provides that undertakings or establishments which carry out the operations referred to in Articles 9 and 10 are to be subject to periodic inspections, and of Article 14 of the Directive, relating to the keeping of records by those operators.

189 Ireland contends that it has not infringed Articles 9 and 10 of the Directive. It also denies that it has failed to fulfil its obligation to introduce periodic inspections. Section 15 of the 1996 Act transposes Article 13 of the Directive correctly and nothing in the latter provision indicates that the inspections required can be carried out only in respect of operators holding a permit. Nor is there an automatic link between the issue of permits and the keeping of records that is required by Article 14 of the Directive.

— Findings of the Court

190 According to Article 13 of the Directive, the appropriate periodic inspections that that provision requires must cover in particular establishments or undertakings

which carry out the operations referred to in Articles 9 and 10 of the Directive. In addition, as is apparent in particular from paragraph 118 of this judgment, such establishments or undertakings must, by virtue of the latter two provisions, obtain in advance an individual permit containing a number of requirements and conditions.

191 It is clear that, if such permits are not granted and, therefore, no requirements and conditions are laid down by a permit with regard to a given undertaking or establishment, the inspections of the latter which would be carried out cannot, by definition, meet the requirements of Article 13 of the Directive. A fundamental aim of the inspections prescribed by that provision is, obviously, to check that the requirements and conditions laid down in permits issued in accordance with Articles 9 and 10 of the Directive are complied with.

192 The same holds for records kept by the establishments or undertakings referred to by the latter provisions, which, as Article 14 of the Directive specifies, must indicate in particular the quantities and nature of the waste or also its treatment method. Such particulars are intended in particular to enable the inspecting authority to check that the requirements and conditions that are laid down in permits issued in accordance with the Directive are complied with, which, as Article 9 of the Directive itself states, must cover the types and quantities of waste and its treatment method.

193 Here, it is apparent from paragraph 139 of this judgment that, as at the date upon which the two-month period set in the 2001 reasoned opinion expired, Ireland was generally and persistently not meeting its obligation to ensure a correct

implementation of Articles 9 and 10 of the Directive. It follows that Ireland was failing, to a corresponding extent, to fulfil its obligation to ensure a correct implementation of Articles 13 and 14 of the Directive.

194 It follows from the foregoing that the Commission's claim alleging breach of the latter provisions is well founded.

Breach of Article 10 EC

195 The Commission further requests the Court to declare that Ireland has failed to comply with the obligations which it has pursuant to Article 10 EC by not responding to its letter of 20 September 1999 seeking observations on Complaint 1999/4478.

196 Ireland does not deny that it has failed to fulfil its obligations resulting from that provision.

197 The Member States are under a duty, by virtue of Article 10 EC, to facilitate the achievement of the Commission's tasks, which consist in particular, in accordance with Article 211 EC, in ensuring that the measures taken by the institutions pursuant to the Treaty are applied (see, in particular, Case C-33/90 *Commission* v *Italy* [1991] ECR I-5987, paragraph 18).

198 It follows that the Member States are required to cooperate in good faith with the inquiries of the Commission pursuant to Article 226 EC, and to provide the Commission with all the information requested for that purpose (Case 192/84 *Commission* v *Greece* [1985] ECR 3967, paragraph 19, and Case C-82/03 *Commission* v *Italy* [2004] ECR I-6635, paragraph 15).

199 Accordingly, the Commission's claim alleging breach of Article 10 EC must be upheld.

200 Having regard to all of the foregoing, it must be held that:

— by failing to take all the measures necessary to ensure a correct implementation of the provisions of Articles 4, 5, 8, 9, 10, 12, 13 and 14 of the Directive, Ireland has failed to comply with its obligations under those provisions;

— by failing to respond to a request for information dated 20 September 1999 in relation to waste operations at Fermoy, County Cork, Ireland has failed to fulfil the obligations which it has pursuant to Article 10 EC.

Costs

201 Under Article 69(2) of the Rules of Procedure, the unsuccessful party is to be ordered to pay the costs if they have been applied for in the successful party's pleadings. Since the Commission has applied for costs and Ireland has been unsuccessful, the latter must be ordered to pay the costs.

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

1. **Declares that, by failing to take all the measures necessary to ensure a correct implementation of the provisions of Articles 4, 5, 8, 9, 10, 12, 13 and 14 of Council Directive 75/442/EEC of 15 July 1975 on waste, as amended by Council Directive 91/156/EEC of 18 March 1991, Ireland has failed to comply with its obligations under those provisions;**

2. **Declares that, by failing to respond to a request for information dated 20 September 1999 in relation to waste operations at Fermoy, County Cork, Ireland has failed to fulfil the obligations which it has pursuant to Article 10 EC;**

3. **Orders Ireland to pay the costs.**

[Signatures]