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JUDGMENT OF THE COURT (Second Chamber)

29 October 2009 (*)

(Failure of a Member State to fulfil obligations – Directive 75/442/EEC – Waste – Domestic waste waters discharged through septic tanks in the countryside – Waste not covered by other legislation – Failure to transpose)

In Case C-188/08,

ACTION under Article 226 EC for failure to fulfil obligations, brought on 6 May 2008,

Commission of the European Communities, represented by S. Pardo Quintillán, D. Lawunmi and M. Wilderspin, acting as Agents, with an address for service in Luxembourg,

applicant,

v

Ireland, represented by D. O'Hagan, acting as Agent, with an address for service in Luxembourg,

defendant,

THE COURT (Second Chamber),

composed of J.-C. Bonichot (Rapporteur), President of the Fourth Chamber, acting as President of the Second Chamber, C.W.A. Timmermans, K. Schiemann, P. Kūris and L. Bay Larsen, Judges,

Advocate General: J. Kokott,

Registrar: R. Grass,

having regard to the written procedure,

having decided, after hearing the Advocate General, to proceed to judgment without an Opinion,

gives the following

Judgment

- 1 By its action, the Commission of the European Communities requests the Court to declare that, by failing fully and correctly to transpose into its domestic legislation the requirements of Articles 4 and 8 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; 'Directive 75/442'), relating to the disposal of domestic waste waters in the countryside through septic tanks and other individual waste water treatment systems ('IWWTS'), Ireland has failed to fulfil its obligations under that directive.

Legal framework

Community law

- 2 Article 1 of Directive 75/442 provides:

'For the purposes of this Directive:

- (a) "waste" shall mean any substance or object in the categories set out in Annex I which the holder discards or intends or is required to discard.

...

(d) "management" shall mean the collection, transport, recovery and disposal of waste, including the supervision of such operations and after-care of disposal sites;

...'

3 Article 2(1) of Directive 75/442 provides:

'The following shall be excluded from the scope of this Directive:

...

(b) where they are already covered by other legislation:

...

(iv) waste waters, with the exception of waste in liquid form;

...'

4 Article 4 of Directive 75/442 is worded as follows:

'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.'

5 Article 8 of Directive 75/442 provides:

'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.'

6 Article 13 of Directive 75/442 is worded as follows:

'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.'

7 Directive 75/442 was subsequently codified by Directive 2006/12/EC of the European Parliament and of the Council of 5 April 2006 on waste (OJ 2006 L 114, p. 9).

National law

The Public Health (Ireland) Act, 1878

8 Section 108 of the Public Health (Ireland) Act, 1878 requires the competent authorities to inspect for and abate nuisances which could be injurious to health. It applies to 'any pool, ditch, gutter, watercourse, privy, urinal, cesspool, drain or ashpit so foul or in such a state as to be a nuisance or injurious to health'. It confers on those authorities enforcement powers, which can be coupled with a daily fine, and power to undertake, themselves, the necessary remedial measures and to recover the costs thereof from the owner.

The Local Government (Water Pollution) Acts, 1977 and 1990

9 Section 3(1) of the Local Government (Water Pollution) Act, 1977, as amended by the Local Government (Water Pollution) (Amendment) Act, 1990 ('the Local Government (Water Pollution) Acts, 1977 and 1990'), prohibits water pollution and makes any contravention of that prohibition subject to criminal sanctions. Section 3(3) thereof provides a defence to a charge of committing such an offence if the accused 'prove[s] that he took all reasonable care to prevent the entry to waters to which the charge relates by providing, maintaining, using, operating and supervising facilities, or by employing practices or methods of operation, that were suitable for the purpose of such prevention'.

10 Section 3(5) of the Local Government (Water Pollution) Act, 1977 provides for exceptions to the prohibition on pollution under section 3(1). Thus, the First Schedule to the Local Government (Water Pollution) Regulations, 1978 contains an exemption as regards 'domestic sewage not exceeding five cubic metres in any 24 hour period which is discharged to an aquifer from a septic tank or any other disposal unit by means of a percolation area, soaking pit or any other method'.

11 Local authorities have powers of inspection, investigation and enforcement in cases of infringement of section 3 of the Local Government (Water Pollution) Acts, 1977 and 1990.

The Building Control Acts 1990-2007 and additional provisions

12 Under the Building Control Acts 1990-2007 new Building Regulations have, since June 1992, governed the construction of new buildings. To be considered compliant with those Regulations building projects must comply with the rules contained in 12 Technical Guidance Documents published by the Irish Department of the Environment, Heritage and Local Government.

13 Part H of the Building Regulations and Technical Guidance Document H include requirements for septic tanks. Part H 2 of the regulations requires a septic tank to be:

- '(a) of adequate capacity and so constructed that it is impermeable to liquids;
- (b) adequately ventilated; and
- (c) so sited and constructed that –
 - (i) it is not prejudicial to the health of any person,
 - (ii) it does not pollute, so as to endanger public health, any water (including ground water) which is used as a source of supply for human consumption,

...'

14 Technical Guidance Document H refers to Standard S.R. 6 of 1991 of the National Standards Authority of Ireland entitled, 'Recommendations for Domestic Effluent Treatment and Disposal from a Single Dwelling House'. That is the standard in Ireland in respect of septic tanks. It was brought to the notice of local authorities by Circular No 1/92 of 8 January 1992 from the Department of the Environment, Heritage and Local Government. In addition, Standard I.S. EN 12566-3:2005 has, since its entry into force on 1 July 2009, governed 'proprietary' systems.

15 Part D of the Building Regulations provides that works must be carried out in a workmanlike manner and materials used must be suitable for the purpose for which they are used. Innovative materials or systems, such as waste water treatment systems, must have approval from the Irish Agrément Board or 'equivalent' certification from an approval body in a Member State.

16 The 37 local Building Control Authorities are responsible for enforcement of the Building Regulations.

The Planning and Development Acts 2000-2006

17 Under the Planning and Development Acts 2000-2006 prior planning permission is required for the installation of any new IWWTS. That may be granted only if the project complies with the corresponding development plan (section 34(2)(a)(i) of the Planning and Development Act 2000).

18 The Department of the Environment, Heritage and Local Government subsequently published Circular SP 5/03 of 31 July 2003. It addresses three subjects: the quality and use of information in development plans; the assessment of sites and of the design, installation and maintenance of septic tanks; and the necessity for suitable follow-up mechanisms (inspections, databases, tests). So far as the assessment of sites and of the design of septic tanks is concerned, that circular envisages the replacement, in Technical Guidance Document H, of Standard S.R.6:1991 by an updated version of the Manual on Treatment Systems for Single Houses, published in 2000 by the Environmental Protection Agency ('the EPA Manual').

19 The following have also been adopted:

- the Sustainable Rural Housing Guidelines of 2005, adopted under section 28 of the Planning and Development Act 2000, which were amended by the Development Plan and Development Management Guidelines 2007. Paragraph 4.5 of the 2005 guidelines repeats the recommendations of Circular SP 5/03. Those recommendations also note the importance of providing new developments with proper waste water treatment and disposal facilities;
- development plans and local area plans, which provide the framework for the grant of planning permissions. Development plans must include the objectives of section 10(2) of the Act, that is to say, in particular, the conservation and protection of the environment under paragraph (c), sustainable development under paragraph (d) and the preservation of the character of the landscape under paragraph (e).

20 Finally, section 31 of the Planning and Development Act 2000 enables the Minister for the Environment to direct local authorities to make development plans comply with the Planning Acts.

County Cavan's 2004 Bye-Laws relating to water pollution

- 21 The Local Government Code of 2001 confers on local authorities the option of making bye-laws which are mandatory, but in a limited locality. Within that framework, County Cavan adopted the Water Pollution (Wastewater Treatment Systems for Single Houses) Bye-Laws, 2004 ('the 2004 Bye-Laws'), which implement a complete system of 'management' of waste water from all IWWTS, old and new.
- 22 Section 1.6 of the 2004 Bye-Laws requires every waste water treatment system to comply with the EPA Manual and its updated versions. Under section 2.1, IWWTS must function properly and be of sufficient capacity.
- 23 In addition, section 6.1 provides that inspections must be carried out by a competent person at least every seven years.
- 24 Finally, section 2.4 enables the competent authorities to require temporary measures to be taken and section 8.1 makes any contravention of the 2004 Bye-Laws a criminal offence.

Pre-litigation procedure

- 25 Following a complaint relating to odours from an urban waste water treatment plant, the Commission, on 18 October 2002, sent Ireland a letter of formal notice, since it considered that Ireland should have transposed Directive 75/442 as regards some aspects of the management of that waste such as odours, not regulated by Council Directive 91/271/EEC of 21 May 1991 concerning urban waste-water treatment (OJ 1991 L 135, p. 40). The Commission then issued, on 11 July 2003, a reasoned opinion on the same complaint.
- 26 In an additional letter of formal notice dated 19 December 2003, the Commission maintained that Ireland, which relied on the exclusion under Article 2(1)(b) of Directive 75/442, had cited no existing legislation, Community or national, which would justify the absence of specific provision transposing that directive as regards odours from urban waste water treatment plants. The Commission also extended its action to domestic waste waters disposed of in the countryside through IWWTS, on the ground that, since no national legislation organised the management of such waste, Ireland had failed to fulfil its obligations to transpose Articles 4 and 7 to 14 of that directive.
- 27 On 22 December 2004, the Commission sent Ireland an additional reasoned opinion repeating the previous complaints, concluding that Ireland had infringed its obligations under Directive 75/442 and requesting it to rectify the infringement within a period of two months from the receipt of that opinion.
- 28 The Commission, taking account of the enactment, at the end of 2005, of new legislation on odours from urban waste water treatment plants, abandoned the complaint on that point.
- 29 On the other hand, since it considered that the situation continued to be unsatisfactory as regards domestic waste waters from septic tanks and other IWWTS in the countryside or in small agglomerations, Ireland having failed, to that extent, to transpose Articles 4 and 7 to 14 of Directive 75/442, the Commission decided to bring the present action.

The action

The applicability of Directive 75/442 and the scope of the action for failure to fulfil obligations

- 30 Ireland denies that Directive 75/442 applies to domestic waste waters disposed of through IWWTS in the countryside.

Arguments of the parties

- 31 In Ireland's submission, waste waters covered by the present action are not 'waste' within the meaning of Directive 75/442 because they are not in the 'list of wastes belonging to the categories listed in Annex I' adopted by the Commission under Article 1(a) in accordance with the procedure referred to in Article 18 of that directive. It also challenges the relevance of the headings in the nomenclature cited by the Commission. Ireland also draws attention to the practical difficulties which the classification of such waste waters as 'waste' would involve, since it is confronted with the management of 400 000 dwellings scattered in the countryside. It submits also that the 5th, 6th, 10th and 12th recitals in the preamble to Directive 75/442 indicate that it does not cover IWWTS.
- 32 The Commission denies that the preamble to Directive 75/442 can be indicative of the Community legislature's intention to include or not to include certain waste in the directive's scope by the mere fact that it is or is not expressly referred to. It argues that Annex I to that directive is very broad in scope. It submits, citing several headings in the nomenclature, that the 'list of wastes' covers waste waters from septic tanks and other IWWTS. It points out also that waste waters are specifically referred to in Article 2 of the directive and that the Court's case-law confirms the inclusion, in certain circumstances, of waste waters in its scope, the Commission referring in that regard to Case C-114/01 *AvestaPolarit Chrome* [2003] ECR I-8725 and Case C-252/05 *Thames Water Utilities* [2007] ECR I-3883. It submits also that the difference between the text of Directive 75/442 in its original version and that following the amendments inserted by Directive 91/156 indicates, rather, the Community legislature's intention not to exclude waste waters from the scope of Directive 75/442.

Findings of the Court

- 33 It follows from settled case-law that both Annex I to Directive 75/442 and the list of wastes included in Commission Decision 2000/532/EC of 3 May 2000 ('the European Waste Catalogue'), adopted pursuant to Article 1 of that directive, are only indicative (see, to that effect, Case C-9/00 *Palin Granit and Vehmassalon kansanterveystyön kuntayhtymän hallitus* [2002] ECR I-3533, paragraph 22; Case C-1/03 *Van de Walle and Others* [2004] ECR I-7613, paragraph 42; and *Thames Water Utilities*, paragraph 24). It follows that the mere fact that waste waters are not included in the European Waste Catalogue does not mean that they cannot be classified as waste.
- 34 Moreover, the Court held in paragraph 26 of the judgment in *Thames Water Utilities* that it is clear from Article 2(1)(b)(iv) of Directive 75/442 that the Community legislature intended expressly to classify waste waters as 'waste' within the meaning of the directive, while providing that that waste may, in certain circumstances, escape its scope and come within that of other legislation.
- 35 It is clear from the foregoing that waste waters covered by the present action are 'waste' within the meaning of Directive 75/442, regardless of whether or not they are included in the European Waste Catalogue.
- 36 However, it is appropriate, first, to note that the Commission, taking into account the fact that Community legislation other than Directive 75/442, namely Directive 91/271 concerning urban waste-water treatment and Council Directive 80/68/EEC of 17 December 1979 on the protection of groundwater against pollution caused by certain dangerous substances (OJ 1980 L 20 p. 43), governs, in part, waste waters and IWWTS, limited the scope of its action to domestic waste waters disposed of in the countryside through IWWTS.
- 37 Secondly, it should be acknowledged that the Commission, in its reply, expressly abandoned the complaints relating to inadequate transposition of Articles 7 and 9 to 14 of Directive 75/442, thus limiting the subject-matter of its action to the incorrect transposition of Articles 4 and 8 thereof. The Commission also accepted that County Cavan's 2004 Bye-Laws constitute 'other legislation' within the meaning of Article 2(1)(b) of that directive and, consequently, also excluded that county from the subject-matter of its action.
- 38 It follows from the foregoing that the present action seeks a declaration that Ireland has failed to fulfil its obligations under Directive 75/442 solely in so far as, with the exception of County Cavan, it has failed to transpose Articles 4 and 8 of that directive as regards domestic waste waters disposed of in the countryside through IWWTS.

The failure to fulfil obligations

Arguments of the parties

- 39 The Commission notes the existence, throughout Ireland, of serious shortcomings which are capable of adversely affecting the environment and which it considers are linked to deficiencies, such as incorrect construction, unsuitable siting, insufficient capacities, maintenance and inspection and the inactivity of the competent administrative authorities.
- 40 It submits, by reference to paragraph 37 of the judgment in Case C-135/05 *Commission v Italy* [2007] ECR I-3475, that whilst it cannot, as a rule, be directly inferred from the fact that a situation is not in conformity with the objectives laid down in Article 4 of Directive 75/442 that the Member State concerned has necessarily failed to fulfil its obligations under that provision, if that situation persists and leads, in particular, to a significant deterioration in the environment over a protracted period without any action being taken by the competent authorities, it may nevertheless be an indication that the Member State has exceeded its discretion.
- 41 The Commission submits that it has provided strong evidence of the existence, in Ireland, of serious damage to the environment in connection with the use of septic tanks, without denial in that regard by Ireland. It also points out that Irish legislation, older and more recent, has not led to any amelioration of the situation in that respect.
- 42 The Commission therefore claims that the Court should hold that the disposal of domestic waste waters in the countryside through septic tanks and other IWWTS is not covered in Ireland by 'other legislation', either Community or national, within the meaning of Article 2(1)(b) of Directive 75/442, with the exception of County Cavan's 2004 Bye-Laws, and that Ireland should have adapted its national law to meet all the obligations arising from Articles 4 and 8 of that directive.
- 43 Ireland contends that, contrary to the Commission's claim, the existing national legal instruments fully meet the requirements of Directive 75/442.
- 44 It submits that the Commission's reasoning in support of the assertion that the national law in force has not enabled pollution to be reduced in practice, like the arguments which the Commission devotes to water pollution in Ireland, is outside the scope of the present action. In any event, the Commission has not proved a link between the use of septic tanks and other IWWTS and groundwater pollution.

Findings of the Court

- 45 Where waste waters are already covered by other legislation Article 2(1)(b)(iv) of Directive 75/442 does not apply to them, except for waste in liquid form.
- 46 It follows from the very wording of that provision, just as it does from the objectives of Directive 75/442, that waste waters which must be regarded as waste fall outside the legal regime under the directive only where, and to the extent that, they are governed by 'other legislation' within the meaning of that directive, that is to say by Community or national legislation which contains precise provisions organising the management of waste and ensures a level of protection which is at least equivalent to

that resulting from Directive 75/442 and, more particularly, from Articles 4, 8 and 15 thereof (see, to that effect, *Thames Water Utilities*, paragraph 34).

- 47 As the Commission points out, Ireland admits to not having expressly and specifically transposed Directive 75/442 as regards waste waters but submits that Irish law as a whole ensures compliance with all the obligations arising from that directive.
- 48 It must be examined, therefore, whether it can be held that there is in Ireland 'other legislation' within the meaning of Directive 75/442 which ensures the protection of the environment as regards waste waters.
- 49 The requirements of Directive 75/442 relevant in this case are contained in its Article 4, which provides that Member States are to 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 Article 8, which requires Member States to 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 of disposal or recovery listed in Annexes IIA and IIB respectively to that directive, or recovers or disposes of it himself in accordance with the provisions thereof.
- 50 Those articles thus cover without distinction 'any holder of waste' and Article 4 concerns all 'processes or methods which could harm the environment'. Those provisions therefore necessarily cover waste from all IWWTS constructed before or after the entry into force of Directive 75/442. Consequently, for waste waters to escape the application of that directive 'other legislation' within the meaning of Article 2(1)(b) must apply to all domestic waste waters disposed of in the countryside.
- 51 The objectives of Directive 75/442 are the protection of human health and of the environment, as is made clear, first, in the third recital in its preamble, in the terms of which 'the essential objective of all provisions relating to waste disposal must be the protection of human health and the environment against harmful effects caused by the collection, transport, treatment, storage and tipping of waste', and, second, in Article 4 of that directive.
- 52 Thus, in order to implement effectively the objectives of, and a level of protection equivalent to that resulting from, Directive 75/442, 'other legislation' within the meaning of Article 2(1)(b) thereof must, taking account of the particularities of the management of a given category of waste and possibly taking as its inspiration the detailed provisions and rules under that directive, contain specific provisions with the object of preventing the adverse effects on the environment or human health which could be caused by that waste.
- 53 As regards domestic waste waters from IWWTS, one of the relevant detailed rules resides, as the Commission recognises, in the implementation of an appropriate system of monitoring the management of that waste, involving, in particular, regular inspection by the competent authorities of the functioning and maintenance of IWWTS.
- 54 As regards, first, the possible existence at Community level of 'other legislation' within the meaning of Article 2(1)(b) of Directive 75/442, the Commission's action as finally pleaded does not cover waste waters and IWWTS covered by Directives 91/271 and 80/68, which do not apply to the disposal of domestic waste waters in the countryside through septic tanks and other IWWTS. Those directives cannot therefore constitute 'other legislation' within the meaning of Directive 75/442.
- 55 In the absence of 'other legislation' at Community level, national legislation may also constitute 'other legislation' within the meaning of Article 2(1)(b) of Directive 75/442 (see, to that effect, *AvestaPolarit Chrome*, paragraphs 49 to 51).
- 56 As regards, secondly, possible 'other legislation' on the national level, it need not necessarily correspond to a single provision organising the management of the waste concerned, but may consist in a number of complementary provisions each covering part of the scope of Directive 75/442, provided that it also fulfils the requirements set out in paragraph 46 of the present judgment.
- 57 It should however be pointed out that 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, among others, Case C-64/01 *Commission v Greece* [2002] ECR I-2523, paragraph 7, and Case C-456/05 *Commission v Germany* [2007] ECR I-10517, paragraph 15). Therefore, a provision which entered into force after the end of that period cannot properly be relied upon in the defence of an action for failure to fulfil obligations.
- 58 Thus, in this case, the Water Services Act 2007, which had not been enacted or entered into force at the end of the period laid down in the reasoned opinion, cannot properly be relied upon by Ireland in the present action. The same applies to Standard I.S. EN 12566-3:2005, relating to 'proprietary' systems, which, according to Ireland itself, did not enter into force until 1 July 2009.
- 59 It follows that the existence at national level of 'other legislation' within the meaning of Article 2(1)(b) of Directive 75/442 can arise, in the framework of the present action, only from the provisions, possibly complementary, of four groups of acts enacted before the end of the period laid down in the reasoned opinion, namely the Public Health (Ireland) Act, 1878, the Local Government (Water Pollution) Acts, 1977 and 1990, the Building Control Acts 1990-2007 and the Planning and Development Acts 2000-2006.
- 60 It must therefore be examined whether the rules laid down by those various provisions, first, cover domestic waste waters in the countryside and, second, ensure the realisation of the objectives of Directive 75/442, particularly by establishing sufficient measures of inspection.
- 61 It should, first of all, be examined whether the scope of those provisions covers the treatment and disposal of domestic waste waters in the countryside sufficiently precisely.

- 62 The Public Health (Ireland) Act, 1878 does not, at first sight, apply to septic tanks and other IWWTS, since the list of sources of nuisance it covers does not include such systems. While the mere fact that it predates the advent of the techniques implemented in those systems makes it impossible to state that it applies to them, Ireland has not made clear whether it could have been applied to the constructions concerned.
- 63 The Building Control Acts 1990-2007 apply only to IWWTS constructed after their entry into force, that is since 1992.
- 64 Likewise, the scope of the Planning and Development Acts 2000-2006 is limited to IWWTS constructed after their entry into force, that is after 2000. Ireland has not, in that regard, shown that other legislation covered earlier installations sufficiently precisely.
- 65 Finally, as regards the Local Government (Water Pollution) Acts, 1977 and 1990, since they prohibit water pollution without reference to the pollution's origin, they apply to domestic waste waters in the countryside and to all IWWTS. However, the exception under those acts for discharges of domestic sewage not exceeding five cubic metres per day is likely to exclude from its scope many IWWTS covered by the present action.
- 66 The same provisions should, secondly, be analysed with regard to the objectives pursued by Directive 75/442.
- 67 The Public Health (Ireland) Act, 1878 applies to nuisances which could be injurious to health. It is not therefore limited, contrary to the Commission's submission, only to the unpleasantness referred to in the second indent of the first paragraph of Article 4 of that directive, that is to say noise and odours. However, that act does not refer to the protection of the environment.
- 68 The objective of the Local Government (Water Pollution) Acts, 1977 and 1990 is limited to the protection of water. That concern could be relevant, in Ireland's submission, as regards certain aspects of the protection of human health and of the environment, in particular because of the protection of underground waters used for human consumption, but that protection, by itself, is insufficient in the light of the broader objective pursued by Directive 75/442.
- 69 On the other hand, contrary to the Commission's submission, the prohibition of pollution under that legislation is sufficiently mandatory, since contraventions of its requirements are subject to criminal sanctions and the cases of exemption from criminal sanctions are limited.
- 70 The Building Control Acts 1990-2007 directly protect only human health and water which may be used for human consumption, without reference to the other elements of the environment. In order to attain that objective, that legislation covers the construction of septic tanks by reference to Standard S.R.6:1991. But that reference does not mean that the legislation can attain the general high level of safety required by Directive 75/442. The Commission points out, in that regard, that that standard is not suited to the geological and soil characteristics generally found in Ireland, and Ireland, for its part, implicitly recognises the inadequacy of that standard by stating, in its rejoinder, that it will not in future refer to it.
- 71 Finally, under the Planning and Development Acts 2000-2006, a person wishing to obtain planning permission must provide the competent authority with certain information relating to the installation of an IWWTS.
- 72 In that regard, it is appropriate to point out, first, that the information in the light of which such permission is granted is, as the Commission acknowledged in its reply, full and relevant, thus enabling the competent authority to give its decision with appropriate knowledge of the case.
- 73 Secondly, the Commission no longer challenges, in its reply, the binding nature of the development plan for the authority responsible for granting planning permissions. While Ireland implicitly recognises the non-binding nature of the Sustainable Rural Housing Guidelines of 2005 and the Development Plan and Development Management Guidelines 2007, since it states, in its rejoinder, its intention to make them mandatory, the Commission admits in its pleadings that development plans must take account of the objectives defined in section 10(2) of the Planning and Development Act 2000, which refers specifically to the 'objectives of conservation and protection of the environment'. However, as the Commission maintains, that provision does not cover all the objectives of Article 4 of Directive 75/442 since it makes no reference to human health.
- 74 Thirdly, the standards in force before the end of the period laid down in the reasoned opinion, in the light of which planning permissions were granted, did not ensure a level of environmental and human health protection as high as that pursued by Directive 75/442. Indeed, as stated in paragraph 70 of the present judgment, Standard S.R.6:1991 relating to septic tanks is not suited to the geological and soil characteristics of most of Ireland.
- 75 Fourthly, the code constituted by the updated version of the EPA Manual, the relevance of which is admitted by the Commission in the final state of its pleadings, is still not mandatory for the authority responsible for granting planning permission. Likewise, the recommendations in Circular SP 5/03 do not have the indisputable binding force necessary for the effective application of Community law, as the Commission maintains in its action by also drawing attention to the numerous cases of non-compliance, on the facts, with that circular.
- 76 Finally, it is appropriate to examine whether the legislation upon which Ireland relies ensures a satisfactory system of inspection of the efficacy of IWWTS.
- 77 So far as concerns the implementation of systems of inspection permitting effective compliance with the objectives of Directive 75/442, it is common ground that settlement in Ireland is, in a substantial part of its territory, scattered, consisting of numerous isolated individual dwellings, not connected to collective sewage treatment systems, which entails almost systematic recourse to individual septic tanks. According to consistent figures presented by Ireland and by the Commission, there are about 400 000 septic tanks in that Member State.

- 78 However, it does not in the least follow that the implementation of an adequate system of assessment and checking of IWWTS is impossible. The Commission recognises indeed, in that respect, that County Cavan's 2004 Bye-Laws, which require inspections at least every seven years, are sufficient with regard to the objectives pursued by Directive 75/442.
- 79 The Public Health (Ireland) Act, 1878 confers on the authorities appropriate powers and imposes on them an inspection obligation corresponding, as the Commission accepts, to the level of safety required by that directive. Likewise, contrary to the impression given by the Commission, the extent of the powers delegated to the authorities by the Building Control Acts 1990-2007 and the existence of minimum standards of inspection are such as reasonably to guarantee the effectiveness of that legislation in the light of the particular constraints prevailing in Ireland.
- 80 The competent authorities' powers under the Local Government (Water Pollution) Acts, 1977 and 1990 and the Planning and Development Acts 2000-2006 are adequate, which the Commission does not deny. However, they are not exercised within the framework of a system of checks guaranteeing, for example by means of regular inspections at intervals appropriate to the situation in Ireland, a level of protection equivalent to that which Directive 75/442 is intended to achieve. Thus, as the Commission maintains, the intervention of the Minister for the Environment under section 31 of the Planning and Development Act 2000 is only discretionary. The circumstance asserted by Ireland that the Minister systematically examines, in practice, the compliance of development plans with that act cannot guarantee, with indisputable binding force, the mandatory nature of that intervention.
- 81 It must, consequently, be held that the Public Health (Ireland) Act, 1878 neither applies, at first sight, to IWWTS nor satisfies, in any event, the objectives of Directive 75/422, that the Local Government (Water Pollution) Acts, 1977 and 1990 do not provide for an appropriate system of inspection, that the Building Control Acts 1990-2007 apply only to IWWTS built after 1992 and do not guarantee that they conform to the objectives of Directive 75/442, and that the Planning and Development Acts 2000-2006 apply only to IWWTS built after 2000, they subject the construction of septic tanks to rules which are not suited to the objectives of the directive and they do not provide for an appropriate system of inspection.
- 82 It follows from all the foregoing that the provisions upon which Ireland relies, even taken in their entirety, do not constitute 'other legislation' within the meaning of Article 2(1)(b) of Directive 75/442, since, in particular, they only partially implement procedures which ensure that the objectives pursued by that directive are effectively realised.
- 83 Consequently, Ireland cannot validly maintain that the existence of 'other legislation' within the meaning of Article 2(1)(b) of Directive 75/442 relieved it of the obligation to adopt the provisions necessary to transpose fully Articles 4 and 8 thereof.
- 84 In the absence of such transposition, the Commission's action must be upheld.
- 85 Accordingly, it must be held that, by failing to adopt, save in County Cavan, all the laws, regulations and administrative provisions necessary to comply with Articles 4 and 8 of Directive 75/442 as regards domestic waste waters disposed of in the countryside through septic tanks and other IWWTS, Ireland has failed to fulfil its obligations under that directive.

Costs

- 86 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. Further, under Article 69(5) thereof, a party who discontinues proceedings is to be ordered to pay the costs if they have been applied for in the other party's observations on the discontinuance. As the Commission, in its reply, partly discontinued its action, and as Ireland, in its rejoinder, applied for costs against the Commission, it is appropriate to order Ireland to pay three quarters of the Commission's costs and to order that, as for the remainder, each party shall bear its own costs.

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

- 1. Declares that, by failing to adopt, save in County Cavan, all the laws, regulations and administrative provisions necessary to comply with Articles 4 and 8 of Council Directive 75/442/EEC of 15 July 1975 on waste, as amended by Council Directive 91/156/EEC of 18 March 1991, as regards domestic waste waters disposed of in the countryside through septic tanks and other individual waste water treatment systems, Ireland has failed to fulfil its obligations under that directive;**
- 2. Orders Ireland to pay three quarters of the costs of the Commission of the European Communities and to bear its own costs;**
- 3. Orders the Commission of the European Communities to bear one quarter of its own costs.**

[Signatures]