

## EU ENVIRONMENTAL INFRINGEMENTS STATUS 2009

Breaking EU law can have legal consequences in two stages. At the first stage (under Art 226 of the EC Treaty), the Commission can refer the Member State to the ECJ, which gives its judgment re whether or not a breach of EU law has occurred (while this can certainly have resource implications for the govt - e.g. members of staff have to work on complying with the judgment - a judgment at this stage is not usually a major concern from the Member State's perspective, since the prospect of financial penalties is a long way off).

The second stage (under Article 228 of the EC Treaty) arises only if the Member State fails to comply with the ECJ's judgment. It ends with the Commission applying to the ECJ for a second time, this time asking that a financial penalty be imposed on the Member State; a second judgment from the ECJ is required for a fine to be imposed.

For the purposes of following the attached table, proceedings at the first and second stages are each broken down into certain steps: (1) there's usually a period of informal contact between the Commission and the Member State; (2) the first formal stage is a letter of formal notice, which the Member State usually has 3 months to respond to; (3) if the Commission isn't happy with the Member State's response, it can issue a Reasoned Opinion, and the Member State again normally has 3 months to respond; (4) if the Commission isn't satisfied with the Member State's response (by the deadline for responding to the Reasoned Opinion), it can refer the case to the ECJ.

While Ireland has lost LOTS of cases at the first stage (Art 226 EC), proceedings against Ireland at the second stage (Art 228 EC) have never run their course to the very end (i.e. to a second judgment from the ECJ), such that Ireland has never been fined for breaching EU law (indeed, only 4 Member States have ever been fined, across all sectors of EU law). That said - and as you'll see from the attached - a number of proceedings at the second stage (Art 228 EC) are ongoing against Ireland at present, and it seems only a matter of time before one of these cases results in a fine (particularly given Ireland's current environmental record: <http://ec.europa.eu/environment/legal/law/statistics.htm>).

While fines have been VERY rare to date across the EU - there have been only 7 fines (France 3; Greece 2; Spain 1; Portugal 1) across all sectors of EU law - all have been imposed since 2000, and four have been since 2003 (the most recent against Greece earlier this month - C-109/08). Further, the level/prospect of fines certainly concentrates minds in govt: e.g. in 2005 France was fined a lump sum of EUR 20m, plus EUR 57.7m for each 6 months of continuing non-compliance with the ECJ's judgment (C-304/02).

So the cases the govt will be most worried about will be those at the second stage (Art 228 EC); and the more advanced a case is at the second stage (NB. a fine is only legally possible after the deadline for responding to the Reasoned Opinion at the second stage has passed), the more worried the government will be. Thus, the more urgent a case is on the attached, the more the govt is under pressure to act, and hence the more leverage we have.

Those cases ranked yellow through red (3, 2, 1) are all effectively at the second stage and will hence be a priority for the government. If it can be shown that the govt is not complying with the ECJ's judgments in those cases, there is a very real risk of a fine (increasing according to the urgency of the case as indicated on the attached). And in respect of certain cases - e.g. C-494/01 (re illegal landfills - the first 'general and persistent' breach case in the EU) - the govt faces a decidedly uphill struggle to comply.

All of the judgments (or Opinions/applications to the ECJ, where the case is at an earlier stage) can be found on the ECJ's website: <http://curia.europa.eu/jurisp/cgi-bin/form.pl?lang=en>

### 3 February 2009

**354. Deputy Michael Ring** asked the **Minister for the Environment, Heritage and Local Government** the measures his Department will take to remedy a situation in view of the fact that obligations under directives (details supplied) have not been complied with here; and if he will make a statement on the matter. [\[3382/09\]](#)

**Minister for the Environment, Heritage and Local Government (Deputy John Gormley):** The European Commission is currently in correspondence with my Department in respect of 28 cases relating to possible infringements of EU environmental legislation including the directives referred to in the question. These cases are at various stages of proceedings as listed in the following table.

Since taking up office, I have prioritised the resolution of issues arising from environmental infringement cases and my Department is working hard to resolve these cases as soon as possible. In this regard I welcome the decision by the Commission, on 29 January 2009, to close two long-standing nature protection cases that it had taken against Ireland under the European Union Habitats (92/43/EEC) and Birds (79/409/EEC) Directives.

The following is an amended version of the table from <http://debates.oireachtas.ie/DDebate.aspx?F=DAL20090203.XML&Dail=30&Ex=All&Page=32>

Stage in Proceedings

<i>Case number</i>	<i>Urgency from Govt's perspective (red most urgent)</i>	<i>Directive Number and General Reference for the main directive in each case</i>	<i>Article 226 Letter of Formal Notice</i>	<i>Article 226 Reasoned Opinion</i>	<i>Being Referred to the European Court of Justice</i>	<i>Before the European Court of Justice for a hearing or awaiting judgement</i>	<i>European Court of Justice Decision to be Implemented</i>	<i>Article 228 Letter of Formal Notice</i>	<i>Article 228 Reasoned Opinion</i>
C-494/01	2	75/442/EEC the waste directive	0	0	0	0	0	1	0
C-188/08	4	75/442/EEC the waste directive	0	0	0	1	0	0	0
???	4	75/442/EEC the waste directive	1	0	0	0	0	0	0
???	4	75/442/EEC the waste directive	1	0	0	0	0	0	0
???	4	75/442/EEC the waste directive	0	1	0	0	0	0	0
C-282/02	1	76/464/EEC on dangerous substances in water - wide ranging infrastructure and monitoring costs issues	0	0	0	0	0	0	1
C-418/04	3	79/409/EEC on wild birds	0	0	0	0	1	0	0
C-148/05	2	79/923/EEC on the quality required of shellfish waters	0	0	0	0	0	1	0
C-248/05	3	80/68/EEC on groundwater	0	0	0	0	1	0	0
C-316/00	1	80/778/EEC on the quality of drinking water for human consumption	0	0	0	0	0	0	1
C-215/06	3	85/337/EEC on the assessment of the effects of certain public and private	0	0	0	0	1	0	0

		projects on the environment							
C-66/06	3	85/337/EEC on the assessment of the effects of certain public and private projects on the environment	0	0	0	0	1	0	0
???	4	85/337/EEC on the assessment of the effects of certain public and private projects on the environment	1	0	0	0	0	0	0
C-50/09	4	85/337/EEC on the assessment of the effects of certain public and private projects on the environment	0	0	1	0	0	0	0
C-95/09	4	91/271/EEC on urban waste water treatment	0	0	1	0	0	0	0
C-316/06	3	91/271/EEC on urban waste water treatment	0	0	0	0	1	0	0
C-183/05	2	92/43/EEC on habitats	0	0	0	0	0	1	0
???	4	92/43/EEC on habitats	0	0	1	0	0	0	0
???	4	98/81/EC on the contained use of genetically modified micro-organisms	1	0	0	0	0	0	0
???	4	99/31/EC on landfill	0	1	0	0	0	0	0
???	4	2000/60/EC the water framework directive	1	0	0	0	0	0	0
???	4	2002/96/EC on waste electrical and electronic equipment	1	0	0	0	0	0	0
???	4	2001/42/EC on the assessment of the effects of certain plans and programmes on the environment	1	0	0	0	0	0	0

C-427/07	4	2003/35/EC on public participation in certain plans and programmes relating to the environment	0	0	0	1	0	0	0
C-418/08	4	2004/35/EC on environmental liability with regard to the prevention and remedying of environmental damage	0	0	0	1	0	0	0
???	4	2004/107/EC on Arsenic, Cadmium, Mercury, Nickel and Polycyclic Aromatic Hydrocarbons in Ambient Air	0	1	0	0	0	0	0
???	4	2006/21/EC on the management of waste from extractive industries and amending Directive 2004/35/EC	1	0	0	0	0	0	0
???	4	2008/01/EC concerning integrated pollution prevention and control (codified version of 1996/61/EC)	1	0	0	0	0	0	0