LEADING CASES
OF THE EUROPEAN COURT OF JUSTICE

EC ENVIRONMENTAL LAW

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NOTE: This is a selection for the five sectors that produce the highest number of open cases:

- **Horizontal Legislation, and in particular the Environment Impact Assessment (EIA)**
- **Air**
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- **Nature**

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HORIZONTAL LEGISLATION – EIA				
Council Directive 85/377/EEC of 27 June 1985 on the assessment of the effects of certain public and private projects on the environment	Case C-431/92 under Articles 155 and 169 of the Treaty	Commission of the European Communities, applicant, v Federal Republic of Germany, defendant, supported by United Kingdom of Great Britain and Norther Ireland, intervener	**On those grounds,** **THE COURT** **hereby:** **1. Dismisses the application;** **2. Orders the parties, including the intervener, to bear their own costs.**	**Summary** 2. Directive 85/377 on the assessment of the effects of certain public and private projects on the environment, and in particular Article 12(1), must be interpreted as precluding a Member State which has transposed it into its national legal order after 3 July 1988, the time-limit for transposition, from waiving the obligations imposed by the directive in respect of a project consent procedure initiated after that time-limit. The sole criterion which may be used, since it accords with the principle of legal certainty and is designed to safeguard the effectiveness of the directive, to determine the date on which the procedure was initiated is the date when the application for consent was formally lodged, disregarding informal contacts and meetings between the competent authority and the developer. Furthermore, paragraph 2 of Annex I to the directive, under which projects for thermal power stations with a heat output of 300 megawatts or more must undergo an assessment, must be interpreted as requiring such projects to be assessed irrespective of whether they are separate constructions, are added to a pre-existing construction or even have close functional links with a pre-existing construction. A project of such a type which has links with an existing construction cannot therefore be within the category of "Modifications to development projects included in Annex I", mentioned in paragraph 12 of Annex II, for which only optional assessment is provided. Finally, Article 2, which lays down an obligation, incumbent on the competent authority in each Member State for the approval of projects, to make certain projects subject to an assessment of their effects on the environment, Article 3, which prescribes the

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				content of the assessment, listing the factors which must be taken into account in it while leaving the competent authority a certain discretion as to the appropriate way of carrying out the assessment in the light of each individual case, and Article 8, which requires the competent national authorities to take into consideration in the development consent procedure the information gathered in the course of the assessment, must be interpreted as unequivocally imposing, regardless of their details, on the national authorities responsible for granting consent an obligation to carry out an assessment of the effects of the projects concerned on the environment. **See the full text of the judgement**
Council Directive 85/337/EEC of 27 June 1985 on the assessment of the effects of certain public and private projects on the environment	Case C-133/94 under Article 169 of the Treaty	Commission of the European Communities, applicant, v Kingdom of Belgium, , defendant, supported by Federal Republic of Germany, intervener	**On those grounds,** **THE COURT (Sixth Chamber)** **hereby:** **1. Declares that, by not completely and correctly transposing into Belgian law Council Directive 85/337/EEC of 27 June 1985 on the assessment of the effects of certain public and private projects on the environment, the Kingdom of Belgium has failed to fulfil its obligations under that directive and under Article 189 of the EC Treaty;** **2. Orders the Kingdom of Belgium to pay the costs;** **3. Orders the Federal Republic of Germany to bear its own costs.**	**Summary** 2. Article 4(2) of Directive 85/337 on the assessment of the effects of certain public and private projects on the environment provides that projects of the classes listed in Annex II to the directive are to be made subject to an assessment where Member States consider that their characteristics so require and that Member States may, to this end, specify certain types of projects as being subject to an assessment or establish the criteria and/or thresholds necessary to determine which of the projects of the classes concerned are to be subject to an assessment. That provision must be interpreted as meaning that it does not empower the Member States to exclude generally and definitively one or more classes subject to possible assessment, since the criteria and/or the thresholds mentioned are not designed to exempt in advance from that obligation certain whole classes of projects listed in Annex II which may be envisaged on the territory of a Member State, but only to facilitate the examination of the actual characteristics exhibited by a given project in order to determine whether it is subject to

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				that obligation. **See the full text of the judgement**
Council Directive 85/337/EEC of 27 June 1985 on the assessment of the effects of certain public and private projects on the environment	Case C-72/95 under Article 177 of the EC Treaty	Aannemersbedrijf P.K. Kraaijeveld BV and Others v Gedeputeerde Staten van Zuid-Holland	**On those grounds, THE COURT, in answer to the questions referred to it by the Nederlandse Raad van State, by judgment of 8 March 1995, hereby rules: 1. The expression "canalization and flood-relief works" in point 10(e) of Annex II to Council Directive 85/337/EEC of 27 June 1985 on the assessment of the effects of certain public and private projects on the environment must be interpreted as including certain types of work on a dyke running alongside waterways. 2. The expression "canalization and flood-relief works" in point 10(e) of Annex II to Directive 85/337 is to be interpreted as including not only construction of a new dyke but also modification of an existing dyke involving its relocation, reinforcement or widening, replacement of a dyke by constructing a new dyke in situ, whether or not the new dyke is stronger or wider than the old one, or a combination of such works. 3. Article 4(2) of Directive 85/337 and point 10(e) of Annex II must be interpreted as meaning that a Member State which establishes the criteria or thresholds necessary to classify projects relating to dykes at a level such that, in practice, all such projects are exempted in advance from the requirement of an impact**	**Summary** 2. The expression "canalization and flood-relief works" in point 10(e) of Annex II to Directive 85/337 on the assessment of the effects of certain public and private projects on the environment must be interpreted as including works for retaining water and preventing floods, and consequently dyke work along navigable waterways. Where it is liable permanently to affect the composition of the soil, flora and fauna or the landscape, such work is likely to have a significant effect on the environment within the meaning of the directive. That expression is also to be interpreted as including not only construction of a new dyke but also modification of an existing dyke involving its relocation, reinforcement or widening, replacement of a dyke by constructing a new dyke in situ, whether or not the new dyke is stronger or wider than the old one, or a combination of such works. 3. Article 4(2) of Directive 85/337 on the assessment of the effects of certain public and private projects on the environment provides that projects of the classes listed in Annex II are to be made subject to an assessment where Member States consider that their characteristics so require and that to that end Member States may specify the types of projects subject to an assessment or establish the criteria and/or thresholds necessary to determine which projects are to be subject to an assessment. That provision, together with point 10(e) of Annex II, which refers to canalization and flood-relief works, must be interpreted as meaning that where, in connection with dyke work which requires an assessment, a Member State establishes those criteria or thresholds in such a way that, in practice, all such projects are exempted in advance from the requirement of an impact

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			assessment exceeds the limits of its discretion under Articles 2(1) and 4(2) of the directive unless all projects excluded could, when viewed as a whole, be regarded as not being likely to have significant effects on the environment. **Where under national law a court must or may raise of its own motion pleas in law based on a binding national rule which have not been put forward by the parties, it must, for matters within its jurisdiction, examine of its own motion whether the legislative or administrative authorities of the Member State have remained within the limits of their discretion under Articles 2(1) and 4(2) of the directive, and take account thereof when examining the action for annulment.** **Where that discretion has been exceeded and consequently the national provisions must be set aside in that respect, it is for the authorities of the Member State, according to their respective powers, to take all the general or particular measures necessary to ensure that projects are examined in order to determine whether they are likely to have significant effects on the environment and, if so, to ensure that they are subject to an impact assessment.**	assessment, it exceeds the limits of its discretion under Articles 2(1) and 4(2) of the directive unless all the projects excluded could, when viewed as a whole, be regarded as unlikely to have significant effects on the environment. In addition, where under national law a court or tribunal hearing an action for the annulment of a decision approving a project must or may raise of its own motion pleas in law based on binding national rules which have not been put forward by the parties, it must, for matters within its jurisdiction, examine of its own motion whether the legislative or administrative authorities of the Member State have remained within the limits of their discretion under Articles 2(1) and 4(2) of the directive, and take account thereof when examining the action for annulment. Where that discretion has been exceeded and consequently the national provisions must be set aside in that respect, it is for the authorities of the Member State, according to their respective powers, to take all the general or particular measures necessary to ensure that projects are examined in order to determine whether they are likely to have significant effects on the environment and, if so, to ensure that they are subject to an impact assessment. **See the full text of the judgement**
Council Directive 85/337/EEC of 27 June 1985 on the assessment of the effects of certain public and private	Case C-81/96, under Article 177 of the EC Treaty	Burgemeester en wethouders van Haarlemmerliede en Spaarnwoude	**On those grounds,** **THE COURT** **(Sixth Chamber),** **in answer to the question referred to it by the Netherlands Raad van State by order**	**Summary** Directive 85/337 on the assessment of the effects of certain public and private projects on the environment is to be interpreted as not permitting Member States to waive the

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projects on the environment		and Others v Gedeputeerde Staten van Noord-Holland	**of 12 March 1996, hereby rules: Council Directive 85/337/EEC of 27 June 1985 on the assessment of the effects of certain public and private projects on the environment is to be interpreted as not permitting Member States to waive the obligations regarding environmental assessments in the case of projects listed in Annex I of the directive where - the projects have already been the subject of a consent granted prior to 3 July 1988, the date by which the directive was to have been transposed into national law, - the consent was not preceded by an environmental assessment in accordance with the requirements of the directive and no use was made of it, and - a fresh consent procedure was formally initiated after 3 July 1988.**	obligations regarding environmental assessments in the case of projects listed in Annex I of the directive where - the projects have already been the subject of a consent granted prior to 3 July 1988, the date by which the directive was to have been transposed into national law, - the consent was not preceded by an environmental assessment in accordance with the requirements of the directive and no use was made of it, and - a fresh consent procedure was formally initiated after 3 July 1988. It is true that the principle of compulsory environmental assessment in accordance with the directive does not apply where the consent procedure was initiated before 3 July 1988 and was still in progress on that date. The reason for that is to avoid making more cumbersome and time-consuming, as a result of the specific requirements imposed by the directive, procedures which are already complex at national level and which were formally initiated before that date. Those considerations do not apply, however, in the circumstances mentioned above, particularly as national legal remedies are available in respect of the new consent procedure. **See the full text of the judgement**
Council Directive 85/337/EEC of 27 June 1985 on the assessment of the effects of certain public and private projects on the environment	Case C-392/96 under Article 169 of the Treaty (now Article 226 EC)	Commission of the European Communities, applicant, v Ireland, defendant	**On those grounds, THE COURT (Fifth Chamber) hereby: 1. Declares that, by not adopting, for the classes of projects covered by points 1(d) and 2(a) of Annex II to Council Directive 85/337/EEC of 27 June 1985 on the assessment of the effects of certain public and private projects on the environment, the measures necessary to transpose**	**Summary** 3. Under Article 4(2) of Directive 85/337 on the assessment of the effects of certain public and private projects on the environment, projects belonging to the classes listed in Annex II to the Directive are to be made subject to an assessment where Member States consider that their characteristics so require, to which purpose the Member States may specify certain types of projects as being subject to an assessment or may establish the criteria and/or thresholds necessary to identify such projects. The limits of that discretion lie in the obligation set out in Article

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			Article 4(2) of that directive correctly, and by not transposing Articles 2(3), 5 and 7 thereof, Ireland has failed to fulfil its obligations under that directive; **2. Dismisses the remainder of the application;** **3. Orders Ireland to pay the costs.**	2(1) of the Directive, under which projects likely to have significant effects on the environment - by virtue inter alia of their nature, size or location - are to be subject to an impact assessment. Thus, a Member State which establishes criteria and/or thresholds taking account only of the size of projects, without also taking their nature and location into consideration, exceeds the limits of its discretion under Articles 2(1) and 4(2) of the Directive. This is true also where a Member State establishes criteria and/or thresholds at a level such that, in practice, all projects of a certain type are exempted in advance from the requirement of an impact assessment, unless all the projects excluded could, when viewed as a whole, be regarded as not being likely to have significant effects on the environment. That is the position where a Member State merely sets a criterion of project size and does not also ensure that the objective of the legislation will not be circumvented by the splitting of projects. Not taking account of the cumulative effect of projects means in practice that all projects of a certain type may escape the obligation to carry out an assessment when, taken together, they are likely to have significant effects on the environment within the meaning of Article 2(1) of the Directive. **See the full text of the judgement**
Council Directive 85/337/EEC of 27 June 1985 on the assessment of the effects of certain public and private projects on the environment	Case C-435/97, under Article 177 of the EC Treaty	World Wildlife Fund (WWF) and Others v Autonome Provinz Bozen and Others	**On those grounds,** **THE COURT** **(Sixth Chamber),** **in answer to the questions referred to it by the Verwaltungsgericht, Autonome Sektion für die Provinz Bozen, by order of 3 December 1997, hereby rules:** **1. Articles 4(2) and 2(1) of Council**	**Summary** 3. Article 4(2) of Directive 85/337 on the assessment of the effects of certain public and private projects on the environment provides that projects of the classes listed in Annex II to the Directive are to be made subject to an assessment where Member States consider that their characteristics so require and that to that end Member States may specify certain types of project as

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			Directive 85/337/EEC of 27 June 1985 on the assessment of the effects of certain public and private projects on the environment are to be interpreted as not conferring on a Member State the power either to exclude, from the outset and in their entirety, from the environmental impact assessment procedure established by the Directive certain classes of projects falling within Annex II to the Directive, including modifications to those projects, or to exempt from such a procedure a specific project, such as the project of restructuring an airport with a runway shorter than 2 100 metres, either under national legislation or on the basis of an individual examination of that project, unless those classes of projects in their entirety or the specific project could be regarded, on the basis of a comprehensive assessment, as not being likely to have significant effects on the environment. It is for the national court to review whether, on the basis of the individual examination carried out by the national authorities which resulted in the exclusion of the specific project at issue from the assessment procedure established by the Directive, those authorities correctly assessed, in accordance with the Directive, the significance of the effects of that project on the environment. **2. In the case of a project requiring assessment under Directive 85/337, Article 2(1) and (2) thereof are to be interpreted as**	being subject to an assessment or may establish the criteria and/or thresholds necessary to determine which of the projects of the classes concerned are to be so subject. The limits of that discretion are to be found in the obligation, set out in Article 2(1) of the Directive, under which projects likely, by virtue inter alia of their nature, size or location, to have significant effects on the environment must be subject to an impact assessment. The above provisions must be interpreted as not conferring on a Member State the power either to exclude, from the outset and in their entirety, from the environmental impact assessment procedure established by the Directive certain classes of projects falling within Annex II to the Directive, including modifications to those projects, or to exempt from such a procedure a specific project, either under national legislation or on the basis of an individual examination of that project, unless the specific project, or those classes of project in their entirety, could be regarded, on the basis of a comprehensive assessment, as not being likely to have significant effects on the environment. Where the discretion conferred by Articles 4(2) and 2(1) has been exceeded by the legislative or administrative authorities of a Member State, individuals may rely on those provisions before a court of that Member State against the national authorities and thus obtain from the latter the setting aside of the national rules or measures incompatible with those provisions. In such cases, it is for the authorities of the Member State to take, according to their relevant powers, all the general or particular measures necessary to ensure that projects are examined in order to determine whether they are likely to have significant effects on the environment and, if so, to ensure that they are subject to an impact assessment. 4. In the case of a project requiring assessment under Directive 85/337 on the assessment of the effects of certain public and private projects on the environment, Article 2(1) and (2) thereof are to be interpreted as allowing a Member State to use an assessment procedure other than the procedure introduced by the

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			allowing a Member State to use an assessment procedure other than the procedure introduced by the Directive where that alternative procedure is incorporated in a national procedure which exists or is to be established within the meaning of Article 2(2) of the Directive. However, an alternative procedure of that kind must satisfy the requirements of Article 3 and Articles 5 to 10 of the Directive, including public participation as provided for in Article 6. **3. Article 1(5) of Directive 85/337 is to be interpreted as not applying to a project, such as that at issue in the main proceedings, which, while provided for by a legislative provision setting out a programme, has received development consent under a separate administrative procedure. The requirements which such a provision and the process under which it has been adopted must satisfy in order that the objectives of the Directive, including that of supplying information, can be regarded as achieved consist in the adoption of the project by a specific legislative act which includes all the elements which may be relevant to the assessment of the impact of the project on the environment.** **4. Article 1(4) of Directive 85/337 is to be interpreted as meaning that an airport which may simultaneously serve both civil and military purposes, but whose main use is commercial, falls within the scope of the**	Directive where that alternative procedure is incorporated in a national procedure which exists or is to be established within the meaning of Article 2(2) of the Directive. However, an alternative procedure of that kind must satisfy the requirements of Article 3 and Articles 5 to 10 of the Directive, including the public participation requirement laid down in Article 6. 5. Article 1(5) of Directive 85/337 on the assessment of the effects of certain public and private projects on the environment, under which the Directive is not to apply to projects the details of which are adopted by a specific act of national legislation, must be interpreted as not applying to a project, which, while provided for by a legislative provision setting out a programme, has received development consent under a separate administrative procedure. The requirements which such a provision must satisfy, as must the process under which it has been adopted, in order that the objectives of the Directive, including that of supplying information, can be regarded as achieved consist in the adoption of the project by a specific legislative act which includes all the elements which may be relevant to the assessment of the impact of the project on the environment. 6. Article 1(4) of Directive 85/337 on the assessment of the effects of certain public and private projects on the environment, under which the Directive does not cover projects serving national defence purposes, is to be interpreted as meaning that an airport which may simultaneously serve both civil and military purposes, but whose main use is commercial, falls within the scope of the Directive. **See the full text of the judgement**

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			Directive. **5. Articles 4(2) and 2(1) of Directive 85/337 are to be interpreted as meaning that, where the discretion conferred by those provisions has been exceeded by the legislative or administrative authorities of a Member State, individuals may rely on those provisions before a court of that Member State against the national authorities and thus obtain from the latter the setting aside of the national rules or measures incompatible with those provisions. In such a case, it is for the authorities of the Member State to take, according to their relevant powers, all the general or particular measures necessary to ensure that projects are examined in order to determine whether they are likely to have significant effects on the environment and, if so, to ensure that they are subject to an impact assessment.**	

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AIR				
Council adopted Decision 88/540/EEC concerning the conclusion of the Vienna Convention for the protection of the ozone layer and the Montreal Protocol on substances that deplete the ozone layer	Case T-336/94 under Article 178 and the second paragraph of Article 215 of the EC Treaty	Efisol SA, a company incorporated under French law, having its registered office in Paris, applicant, v Commission of the European Communities, defendant	**On those grounds,** **THE COURT OF FIRST INSTANCE (First Chamber, Extended Composition) hereby:** **1. Dismisses the application;** **2. Orders the Commission to pay the whole of the costs.**	**Conclusion Summary** 8. The incurring by the Community of non-contractual liability, within the meaning of the second paragraph of Article 215 of the Treaty, depends on fulfilment of a set of conditions as regards the unlawfulness of the conduct alleged against the Community institution, the fact of damage and the existence of a causal link between the conduct in question and the damage complained of. 9. The right to rely on legitimate expectations extends to any individual who is in a situation in which it is apparent that the Community administration, by giving him precise assurances, has led him to entertain justified expectations. An individual cannot, by virtue of the allocation to him of an import quota, have a justified expectation that the import licences applied for will subsequently be issued to him, since such allocation is merely the first stage in securing an effective right to import. 10. If a prudent and discriminating trader could have foreseen the adoption of a Community measure likely to affect his interests, he cannot avail himself of any legitimate expectation if the measure is then adopted. Such will be the case where a trader has set in motion the transport by train of the consignments ordered without awaiting the decision of the Community institution on the application for import licences and without taking the precautions necessary to safeguard his interests in the event of the application for licences being rejected. 11. There are two stages in the administrative procedure laid down in Regulation No 594/91 for obtaining authorization to import into the Community substances that deplete the ozone layer: first, the allocation of a quota under Article 3 of that

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				regulation and, second, the issue, pursuant to Article 4 thereof, of one or more import licences corresponding to the quota allocated. It follows that the right to import, accorded when a quota is allocated, takes effect only once an import licence has been issued. 12. There can be no finding that a legitimate expectation has arisen on the part of an individual where the measure liable to give rise to such expectation has been withdrawn by the administration within a reasonable period. 13. A legitimate expectation cannot arise from conduct on the part of a Community institution which is inconsistent with Community rules. 14. Where the conduct on the part of a defendant institution, which was inconsistent with the Community rules, has contributed to the creation of a dispute, an applicant cannot be criticized for having instituted proceedings before the Court for an assessment of that conduct, as well as of any damage which may have resulted from it. It is therefore necessary, in such circumstances, to apply the second subparagraph of Article 87(3) of the Rules of Procedure, according to which the Court may order a party, even if successful, to pay the costs of proceedings which, by its own conduct, it has caused the opposite party to incur. **See the full text of the judgement**
Council Directive 96/62/EC of 27 September 1996 on ambient air quality assessment and management	Case C-417/99 Article 226 EC Treaty	Commission of the European Communities, applicant, v Kingdom of Spain, defendant	**On those grounds,** **THE COURT (Fifth Chamber)** **hereby:** **1. Declares that, by failing to adopt within the prescribed period the laws, regulations and administrative provisions necessary to designate the competent authorities and bodies referred to in the first paragraph of Article 3 of Council Directive 96/62/EC of**	**Conclusion Summary** 1. Directive 96/62, the aim of which is to define the basic principles of a common strategy to assess and manage ambient air quality, provides that Member States are to designate the competent authorities and bodies responsible in particular for controlling the limit values and alert thresholds to be set for the pollutants listed in Annex I to the Directive. The fact that the directive provides for certain details, such as limit values and

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			27 September 1996 on ambient air quality assessment and management, the Kingdom of Spain has failed to fulfil its obligations under that directive; **2. Orders the Kingdom of Spain to pay the costs.**	alert thresholds for the pollutants listed in Annex I, to be decided on in the future cannot, in the absence of express provision to that effect, relieve Member States of their obligation to adopt within the prescribed period the measures necessary to comply with the directive. That obligation to designate, which constitutes a preliminary step in implementing the general objectives of the directive, is of a purely general nature, and remains, whether or not all the conditions for the application of the provisions of Community law have already been fulfilled. (see paras 30-32) 2. A directive must be transposed into national law by provisions capable of creating a situation which is sufficiently precise, clear and transparent to enable individuals to ascertain their rights and obligations (see para. 38) **See the full text of the judgement**
Council Directive 89/369/EEC of 8 June 1989 on the prevention of air pollution from new municipal waste incineration plants	Case C-139/00 under Article 226 EC Treaty	Commission of the European Communities, applicant, v Kingdom of Spain, defendant	**Operative part of the judgment** **On those grounds,** **THE COURT** **(Fifth Chamber)** **hereby:** **1. Declares that, by failing to adopt the measures necessary in order to ensure, as regards the three incineration furnaces installed at Mazo and Barlovento on the island of La Palma, the application of:** **- Article 6 of Council Directive 89/369/EEC of 8 June 1989 on the prevention of air pollution from new municipal waste incineration plants, inasmuch as, with regard to those furnaces, the competent authorities** **- have not taken periodic measurements in**	**Conclusion Summary** APPLICATION for a declaration that, by failing to take the measures necessary in order to ensure, as regards the three incineration furnaces installed at Mazo and Barlovento on the island of La Palma (Spain), the application of: - 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), inasmuch as those furnaces are operating without the required prior authorisation: - Article 6 of that directive, inasmuch as, with regard to those furnaces, the competent authorities - have not taken periodic measurements in respect of the parameters prescribed by that article; - have not given prior approval for the sampling and measurement procedures and have not determined the location of the measurement points concerned;

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			respect of the parameters prescribed by that article; **- have not given prior approval for the sampling and measurement procedures and have not determined the location of the measurement points concerned;** **- have not laid down any measurement programme;** **- Article 7 of that directive, inasmuch as those furnaces are not equipped with auxiliary burners, which would make it possible to maintain the minimum combustion temperature of 850_C, particularly during start-up and shut-down operations,** **the Kingdom of Spain has failed to fulfil its obligations under that directive;** **2. Dismisses the remainder of the action;** **3. Orders the Commission of the European Communities to pay one third of the costs and the Kingdom of Spain two thirds of the costs.**	- have not laid down any measurement programme; - Article 7 of that directive, inasmuch as those furnaces are not equipped with auxiliary burners, which would make it possible to maintain the minimum combustion temperature of 850_C, particularly during start-up and shut-down operations, the Kingdom of Spain has failed to fulfil its obligations under that directive. For all the reasons set out above, it must be held that, by failing to adopt the measures necessary in order to ensure, as regards the three incineration furnaces installed at Mazo and Barlovento on the island of La Palma, the application of: - Article 6 of Directive 89/369, inasmuch as, with regard to those furnaces, the competent authorities - have not taken periodic measurements in respect of the parameters prescribed by that article; - have not given prior approval for the sampling and measurement procedures and have not determined the location of the measurement points concerned; - have not laid down any measurement programme; - Article 7 of that directive, inasmuch as those furnaces are not equipped with auxiliary burners, which would make it possible to maintain the minimum combustion temperature of 850_C, particularly during start-up and shut-down operations, the Kingdom of Spain has failed to fulfil its obligations under that directive. The remainder of the action is dismissed. **See the full text of the judgement**
Council Directive 89/369/EEC of 8 June 1989 on the prevention of air pollution from new municipal waste incineration plants	Case C-60/01 under Article 226 EC Treaty	Commission of the European Communities, applicant, v French	**On those grounds,** **THE COURT** **hereby:** **1. Declares that, by failing to adopt all the necessary and appropriate measures to ensure that all incinerators in France are operated in accordance with the**	**Conclusion Summary** APPLICATION for a declaration that, by failing to adopt all the necessary and appropriate measures to ensure that all incinerators currently operating in France are operated in accordance with the combustion conditions laid down by Council Directive 89/369/EEC of 8 June 1989 on the prevention

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Council Directive 89/429/EEC of 21 June 1989 on the reduction of air pollution from existing municipal waste incineration plants		Republic, defendant	**combustion conditions laid down by Council Directive 89/369/EEC of 8 June 1989 on the prevention of air pollution from new municipal waste incineration plants and Council Directive 89/429/EEC of 21 June 1989 on the reduction of air pollution from existing municipal waste incineration plants or that they ceased to operate by the due date, namely 1 December 1990 as regards new plants and 1 December 1996 as regards existing plants, the French Republic has failed to fulfil its obligations under Article 4(1) of Directive 89/369 and Articles 2(a) and 4 of Directive 89/429;** **2. Orders the French Republic to pay the costs.**	of air pollution from new municipal waste incineration plants (OJ 1989 L 163, p. 32) and Council Directive 89/429/EEC of 21 June 1989 on the reduction of air pollution from existing municipal waste incineration plants (OJ 1989 L 203, p. 50) or that they ceased to operate by the due date, namely 1 December 1990 as regards new plants and 1 December 1996 as regards existing plants, the French Republic has failed to fulfil its obligations under Article 4(1) of Directive 89/369, Articles 2(a) and 4 of Directive 89/429 and the third paragraph of Article 249 EC. As to those arguments, first of all, the third paragraph of Article 249 EC provides that `a directive shall be binding, as to the result to be achieved, upon each Member State to which it is addressed, but shall leave to the national authorities the choice of form and methods'. It follows that one of the principal characteristics of directives is precisely that they are intended to achieve a specified result. 25. However, Community legislative practice shows that there may be great differences in the types of obligations which directives impose on the Member States and therefore in the results which must be achieved. 26. Some directives require legislative measures to be adopted at national level and compliance with those measures to be the subject of judicial or administrative review (see, for example, Article 4, in conjunction with Article 8, of Council Directive 84/450/EEC of 10 September 1984 relating to the approximation of the laws, regulations and administrative provisions of the Member States concerning misleading advertising (OJ 1984 L 250, p. 17); see, in this regard, Case C-360/88 Commission v Belgium [1989] ECR 3803 and Case C-329/88 Commission v Greece [1989] ECR 4159). 27. Other directives lay down that the Member States are to take the necessary measures to ensure that certain objectives formulated in general and unquantifiable terms are attained, whilst leaving them some discretion as to the nature of the

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				measures to be taken (see, for example, Article 4 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); see, in this regard, Case C-365/97 Commission v Italy (the `San Rocco' case) [1999] ECR I-7773, paragraphs 67 and 68). 28. Yet other directives require the Member States to obtain very precise and specific results after a certain period (see, for example, Article 4(1) of Council Directive 76/160/EEC of 8 December 1975 concerning the quality of bathing water (OJ 1976 L 31, p. 1); see, in this regard, Case C-56/90 Commission v United Kingdom [1993] ECR I-4109, paragraphs 42, 43 and 44, Case C-198/97 Commission v Germany [1999] ECR I-3257, paragraph 35, Case C-307/98 Commission v Belgium [2000] ECR I-3933, paragraph 51, and Case C-268/00 Commission v Netherlands [2002] ECR I-0000, paragraphs 12, 13 and 14). 29. Accordingly, given that a failure to fulfil obligations can be found only if there is, on expiry of the period laid down in the reasoned opinion, a situation contrary to Community law which is objectively attributable to the Member State concerned, a finding that the failure at issue has occurred depends on the type of obligations imposed by the provisions of Directives 89/369 and 89/429. It follows that Directives 89/369 and 89/429 impose on the Member States obligations, formulated in clear and unequivocal terms, to achieve a certain result, in order that their incineration plants meet detailed and precise requirements within the stated time-limits. Having regard to all the foregoing considerations, it must be found that, by failing to adopt all the necessary and appropriate measures to ensure that all incinerators in France are operated in accordance with the combustion conditions laid down by Directives 89/369 and 89/429 or that they ceased to operate by the due date, namely 1 December 1990 as regards new plants and 1 December 1996 as regards existing plants, the French Republic

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				has failed to fulfil its obligations under Article 4(1) of Directive 89/369 and Articles 2(a) and 4 of Directive 89/429. **See the full text of the judgement**

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WATER				
Council Directive 76/160/EEC of 8 December 1975 concerning the quality of bathing water	Case C-278/01 under Article 228 EC Treaty	Commission of the European Communities, applicant v Kingdom of Spain, defendant	**On those grounds,** **THE COURT** **(Full Court),** **hereby:** **1. Declares that, by not taking the measures necessary to ensure that the quality of inshore bathing water in Spanish territory conforms to the limit values set in accordance with Article 3 of Council Directive 76/160/EEC of 8 December 1975 concerning the quality of bathing water, notwithstanding its obligations under Article 4 of that directive, the Kingdom of Spain has not taken all the measures necessary to comply with the Court's judgment of 12 February 1998 in Case C-92/96 Commission v Spain and has accordingly failed to fulfil its obligations under Article 228 EC;** **2. Orders the Kingdom of Spain to pay to the Commission of the European Communities, into the account `European Community own resources', a penalty payment of EUR 624 150 per year and per 1% of bathing areas in Spanish inshore waters which have been found not to conform to the limit values laid down under Directive 76/160 for the year in question, as from the time when the quality of bathing water achieved in the first**	**Conclusion Summary** APPLICATION, first, for a declaration that, by not taking the necessary measures to ensure that the quality of inshore bathing water in Spanish territory conforms to the limit values set in accordance with Article 3 of Council Directive 76/160/EEC of 8 December 1975 concerning the quality of bathing water (OJ 1976 L 31, p. 1), notwithstanding its obligations under Article 4 of that directive, the Kingdom of Spain has not complied with the judgment of the Court of Justice in Case C-92/96 Commission v Spain [1998] ECR I-505, and has accordingly failed to fulfil its obligations under Article 228 EC and, second, for an order that the Kingdom of Spain be required to pay to the Commission, into the account `European Community own resources', a penalty payment of EUR 45 600 per day of delay in adopting the measures necessary to comply with the said judgment in Commission v Spain, from the date on which judgment is delivered in this case until the date on which the said judgment in Commission v Spain is complied with. Since Article 395 of the Act concerning the conditions of accession of the Kingdom of Spain and the Portuguese Republic and the adjustments to the Treaties (OJ 1985 L 302, p. 23) does not provide for any derogation from the Directive in favour of the Kingdom of Spain, the quality of Spanish bathing water should have conformed to the limit values set by the Directive as from 1 January 1986. In its judgment in the case of Commission v Spain, the Court of Justice declared that, by failing to take all necessary measures to ensure that the quality of inshore bathing water in Spain conforms to the limit values set in accordance with Article 3 of the Directive, the Kingdom of Spain had failed to fulfil its

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			bathing season following delivery of this judgment is ascertained until the year in which the judgment in Commission v Spain is fully complied with; **3. Orders the Kingdom of Spain to pay the costs.**	obligations under Article 4 thereof. The penalty payment must therefore be imposed not on a daily basis but on an annual basis, following submission of the annual report relating to the implementation of the Directive by the Member State concerned. In those circumstances, a penalty which does not take account of the progress which a Member State may have made in complying with its obligations is neither appropriate to the circumstances nor proportionate to the breach which has been found. In order for the penalty payment to be appropriate to the particular circumstances of the case and proportionate to the breach which has been found, the amount must take account of progress made by the defendant Member State in complying with the judgment in Commission v Spain. To that end it is necessary to require that Member State to pay annually an amount calculated according to the percentage of bathing areas in Spanish inshore waters which do not yet conform to the mandatory values laid down under the Directive. Multiplying the basic amount of EUR 500 by a coefficient of 11.4 (for ability to pay), 4 (for the seriousness of the breach) and 1.5 (for the duration of the breach) gives an amount of EUR 34 200 per day, or EUR 12 483 000 per year. That amount is based on the consideration that 20% of the bathing areas concerned did not conform to the limit values in the Directive; it must therefore be divided by 20, to obtain an amount corresponding to 1% of areas not in conformity, that is, EUR 624 150 per year. **See the full text of the judgement**
Council Directive 76/464/EEC of 4 May 1976 on pollution caused by certain dangerous substances discharged into the	Case C-231/97 Reference for a preliminary ruling under Article 177 of the EC Treaty	A.M.L. van Rooij v Dagelijks bestuur van het waterschap de Dommel,	**On those grounds,** **THE COURT** **(Sixth Chamber),** **in answer to the questions referred to it by the Nederlandse Raad van State by judgment of 17 June 1997, hereby rules:**	**Conclusion Summary** The term “discharge” in Article 1(2)(d) of Directive 76/464 on pollution caused by certain dangerous substances discharged into the aquatic environment of the Community must be interpreted

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aquatic environment of the Community	(now Article 234 EC)	third party: Gebr. Van Aarle BV	**1. The term `discharge' in Article 1(2)(d) of Council Directive 76/464/EEC of 4 May 1976 on pollution caused by certain dangerous substances discharged into the aquatic environment of the Community must be interpreted as covering the emission of contaminated steam which is precipitated on to surface water. The distance between those waters and the place of emission of the contaminated steam is relevant only for the purpose of determining whether the pollution of the waters cannot be regarded as foreseeable according to general experience, so that the pollution is not attributable to the person causing the steam.** **2. The term "discharge" in Article 1(2)(d) of Directive 76/464 must be interpreted as covering the emission of contaminated steam which is first precipitated on to land and roofs and then reaches the surface water via a storm water drain. It is not material in this respect whether the drain in question belongs to the establishment concerned or to a third party.**	as covering the emission of contaminated steam which is precipitated on to surface water. The distance between those waters and the place of emission of the contaminated steam is relevant only for the purpose of determining whether the pollution of the waters cannot be regarded as foreseeable according to general experience, so that the pollution is not attributable to the person causing the steam. The term "discharge" must also be interpreted as covering the emission of contaminated steam which is first precipitated on to land and roofs and then reaches the surface water via a storm drain. It is not material in this respect whether the drain in question belongs to the establishment concerned or to a third party. In those circumstances, since it considered that the dispute raised a question of the interpretation of the term "discharge" within the meaning of Directive 76/464, the Nederlandse Raad van State stayed proceedings and referred the following questions to the Court for a preliminary ruling: 1. Must the term "discharge" in Article 1(2)(d) of Council Directive 76/464/EEC of 4 May 1976 on pollution caused by certain dangerous substances discharged into the aquatic environment of the Community (OJ 1976 L 129, p. 23) be interpreted as covering precipitation of contaminated steam on to surface water? Is the distance from which the steam in question is precipitated on to the surface water relevant in that respect? 2. Does the term "discharge" cover steam which is first precipitated on to land and roofs and then reaches the surface water via a storm water drain, whether belonging to the establishment concerned or to residential or other buildings? Is it material to the reply to be given to this question whether the contaminated steam reaches the surface water via the storm water drain of the establishment concerned or via that of a third party? 3. If Questions 1 and/or 2 are answered in the negative, is it

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				permissible for national legislation to assign a different, more wide-ranging meaning to the term “discharge” than that in the directive?' Question 1 By its first question, the national court essentially asks whether the term “discharge” in Article 1(2)(d) of Directive 76/464 is to be interpreted as covering the emission of contaminated steam which is precipitated on to surface water, and whether the distance between the place where the steam is emitted and the waters on to which it is precipitated is relevant in this respect. In Case C-232/97 Nederhoff v Dijkgraf en Hoogheemraden van het Hoogheemraadschap Rijnland [1999] ECR I-6385, paragraph 37, judgment in which was given today, the Court held that the term `discharge' defined in Article 1(2) of Directive 75/464 is to be understood as referring to any act attributable to a person by which one of the dangerous substances listed in List I or List II of the Annex to the directive is directly or indirectly introduced into the waters to which the directive applies. It follows that Directive 76/464 applies to discharges of all the dangerous substances mentioned in the annex thereto, whatever their state. Accordingly, the answer to Question 1 must be that the term “discharge” in Article 1(2)(d) of Directive 76/464 is to be interpreted as covering the emission of contaminated steam which is precipitated on to surface water. The distance between those waters and the place of emission of the contaminated steam is relevant only for the purpose of determining whether the pollution of the waters cannot be regarded as foreseeable according to general experience, so that the pollution is not attributable to the person causing the steam. Question 2 By its second question the national court essentially asks whether the term “discharge” in Article 1(2)(d) of Directive 76/464 is to be interpreted as covering the emission of contaminated steam which is first precipitated on to land and roofs and then reaches

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				the surface water via a storm water drain, and whether it is material in this respect whether the drain in question belongs to the establishment concerned or to a third party. Consequently, the answer to Question 2 must be that the term "discharge" in Article 1(2)(d) of Directive 76/464 is to be interpreted as covering the emission of contaminated steam which is first precipitated on to land and roofs and then reaches the surface water via a storm water drain. It is not material in this respect whether the drain in question belongs to the establishment concerned or to a third party. Question 3 In view of the answers to Questions 1 and 2, there is no need to answer Question 3. **See the full text of the judgement**
Council Directive 76/464/EEC of 4 May 1976 on pollution caused by certain dangerous substances discharged into the aquatic environment of the Community Council Directive 86/280/EEC of 12 June 1986 on limit values and quality objectives for discharges of certain dangerous substances included in List I of the Annex to Directive 76/464.	Case C-232/97 under Article 177 of the EC Treaty (now Article 234 EC Treaty)	L. Nederhoff & Zn. v Dijkgraaf en hoogheemraden van het Hoogheemraadschap Rijnland.	**On those grounds, THE COURT (Sixth Chamber), in answer to the questions referred to it by the Nederlandse Raad van State by judgment of 17 June 1997, hereby rules: 1. The term `discharge' in Article 1(2)(d) of Council Directive 76/464/EEC of 4 May 1976 on pollution caused by certain dangerous substances discharged into the aquatic environment of the Community must be interpreted as not including the pollution from significant sources, including multiple and diffuse sources, referred to in Article 5(1) of Council Directive 86/280/EEC of 12 June 1986 on limit values and quality objectives for discharges of certain dangerous substances**	**Conclusion Summary** The term "discharge" in Article 1(2)(d) of Directive 76/464 on pollution caused by certain dangerous substances discharged into the aquatic environment of the Community is to be interpreted as not including the pollution from significant sources, including multiple and diffuse sources, referred to in Article 5(1) of Directive 86/280 on limit values and quality objectives for discharges of certain dangerous substances included in List I of the Annex to Directive 76/464. The above term must be understood as referring to any act attributable to a person by which one of the dangerous substances listed in List I or List II of the Annex to the Directive is directly or indirectly introduced into the waters to which the Directive applies. On the other hand, the notion of pollution from significant sources, including

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Directive 76/769 on the approximation of the laws, regulations and administrative provisions of the Member States relating to restrictions on the marketing and use of certain dangerous substances and preparations, as amended by Directive 94/60			**included in List I of the Annex to Directive 76/464.** **2. The expression `significant sources ... (including multiple and diffuse sources)' in Article 5(1) of Directive 86/280 must be interpreted as not including the escape of creosote from wooden posts placed in surface water, where the pollution caused by that substance is attributable to a person.** **3. The term `discharge' in Article 1(2)(d) of Directive 76/464 must be interpreted as including the placing by a person in surface water of wooden posts treated with creosote.** **4. Directive 76/464 permits Member States to make the authorisation for a discharge subject to additional requirements not provided for in that directive, in order to protect the aquatic environment of the Community against pollution caused by certain dangerous substances. The obligation to investigate or choose alternative solutions which have less impact on the environment constitutes such a requirement, even if it may have the effect of making the grant of authorisation impossible or altogether exceptional.** **5. The limitative conditions for the use of creosote laid down in point 32 of Annex I to Council Directive 76/769/EEC of 27 July 1976 on the approximation of the laws, regulations and administrative provisions of the Member States relating to restrictions on the marketing and use of**	multiple and diffuse sources, referred to in Article 5(1) of Directive 86/280, relates to cases where the pollution, precisely because of its diffuse nature, cannot be attributed to a person and therefore cannot be the subject of prior authorisation. Consequently, the term “discharge” in Article 1(2)(d) of Directive 76/464 covers the placing by a person in surface water of wooden posts treated with creosote and the expression `significant sources ... (including multiple and diffuse sources)' in Article 5(1) of Directive 86/280 does not cover the escape of creosote from wooden posts placed in surface water, where the pollution caused by that substance is attributable to a person. Directive 76/464 on pollution caused by certain dangerous substances discharged into the aquatic environment of the Community permits Member States to make the authorisation for a discharge subject to additional requirements not provided for in that Directive, in order to protect the aquatic environment of the Community against pollution caused by certain dangerous substances. The obligation to investigate or choose alternative solutions which have less impact on the environment constitutes such a requirement, even if it may have the effect of making the grant of authorisation impossible or altogether exceptional. The limitative conditions for the use of creosote laid down in point 32 of Annex I to Directive 76/769 on the approximation of the laws, regulations and administrative provisions of the Member States relating to restrictions on the marketing and use of certain dangerous substances and preparations, as amended by Directive 94/60, do not

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			certain dangerous substances and preparations, as amended by European Parliament and Council Directive 94/60/EC of 20 December 1994, do not preclude an authority of a Member State, when considering applications for authorisation concerning the introduction into surface water by professional users of wood treated with that substance, from establishing criteria of assessment such that its use is impossible or altogether exceptional.	preclude an authority of a Member State, when considering applications for authorisation concerning the introduction into surface water by professional users of wood treated with that substance, from establishing criteria of assessment such that its use is impossible or altogether exceptional. **See the full text of the judgement**
Council Directive 76/464/EEC of 4 May 1976 on pollution caused by certain dangerous substances discharged into the aquatic environment of the Community	Case C-384/97 under Article 169 of the Treaty (now Article 226 EC Treaty)	Commission of the European Communities, applicant v Hellenic Republic, defendant.	**On those grounds,** **THE COURT (Sixth Chamber)** **hereby:** **1. Declares that, by failing to adopt pollution reduction programmes including quality objectives for the dangerous substances covered by the first indent of List II of the annex to Council Directive 76/464/EEC of 4 May 1976 on pollution caused by certain dangerous substances discharged into the aquatic environment of the Community, the Hellenic Republic has failed to fulfil its obligations under Article 7(1) of that directive;** **2. Orders the Hellenic Republic to pay the costs.**	**Conclusion Summary** 1. In the context of an action brought under Article 169 of the Treaty (now Article 226 EC), the question whether a Member State has failed to fulfil its obligations must be determined by reference to the situation prevailing at the end of the period laid down in the reasoned opinion, and subsequent changes cannot be taken into account by the Court. (see para. 35) 2. The programmes which the Member States are required to establish, under Article 7 of Directive 76/464, in order to reduce pollution of their waters by the substances within List II in the annex to the directive must be specific, that is to say, they must have a comprehensive and coherent approach, covering the entire national territory and providing practical and coordinated arrangements for the reduction of pollution caused by any of the substances in List II which are relevant in the particular context of each Member State, in accordance with the quality objectives

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				fixed by those programmes for the waters affected. Accordingly, national measures cannot be regarded as programmes within the meaning of Article 7 of the directive where, even if capable of contributing to a reduction in water pollution, they are merely ad hoc measures and not comprehensive and coherent programmes of that kind, based on studies of the waters affected and setting quality objectives. (see paras 39-40, 42) **See the full text of the judgement**
Directive 80/68/EEC on the protection of groundwater against pollution caused by certain dangerous substances	Case C-131/88 under Article 169 of the EEC Treaty	Commission of the European Communities, applicant v Federal Republic of Germany, defendant	**My consideration of the case leads me to the conclusion that the Commission's application must be upheld in its entirety. I would therefore suggest that the Court declare that the Federal Republic of Germany has failed to fulfil its obligations under the EEC Treaty by failing to transpose adequately into national law Directive No 80/68/EEC, and order the Federal Republic of Germany to pay the costs.** **W. Van Gerven** **Judge-Rapporteur**	**Conclusion Summary** 1. The transposition of a directive into domestic law does not necessarily require that its provisions be incorporated formally and verbatim in express, specific legislation; a general legal context may, depending on the content of the directive, be adequate for the purpose provided that it does indeed guarantee the full application of the directive in a sufficiently clear and precise manner so that, where the directive is intended to create rights for individuals, the persons concerned can ascertain the full extent of their rights and, where appropriate, rely on them before the national courts. Mere administrative practices, which are alterable at the will of the administration and are not given adequate publicity, cannot be regarded as constituting adequate compliance with the obligation imposed on Member States to whom a directive is addressed by Article 189 of the EEC Treaty.

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				2. Directive 80/68 seeks to protect the Community's groundwater fully and effectively by laying down specific and detailed provisions requiring the Member States to adopt a series of prohibitions, authorization schemes and monitoring procedures, which create rights and obligations for individuals, in order to prevent or limit discharges of certain substances. It must therefore be transposed in a manner which satisfies certain requirements as to precision and clarity. 3. Each Member State is free to delegate powers to its domestic authorities as it sees fit and to implement directives by means of measures adopted by regional or local authorities. That division of powers does not, however, release it from the obligation to ensure that the provisions of the directive are properly implemented in national law. **See the full text of the judgement**
Council Directive 91/676/EEC of 12 December 1991 concerning the protection of waters against pollution caused by nitrates from agricultural sources	Case C-161/00 under Article 226 EC Treaty	Commission of the European Communities, applicant v Federal Republic of Germany, defendant supported by Kingdom of Spain, interveners	**On those grounds, THE COURT (Sixth Chamber), hereby:** **1. Declares that, by failing to adopt all the laws, regulations and administrative provisions necessary in order to comply with the obligations laid down in Article 5(4)(a) and point 2 of Annex III to Council Directive 91/676/EEC of 12 December 1991 concerning the protection of waters against pollution caused by nitrates from agricultural sources, the Federal Republic of Germany has failed to fulfil its obligations under that Directive;** **2. Orders the Federal Republic of**	**Conclusion Summary** APPLICATION for a declaration that, by failing to adopt all the measures necessary in order to comply with the obligations laid down in Article 5(4)(a) and point 2 of Annex III to Council Directive 91/676/EEC of 12 December 1991 concerning the protection of waters against pollution caused by nitrates from agricultural sources (OJ 1991 L 375, p. 1), the Federal Republic of Germany has failed to fulfil its obligations under that directive. The action programmes referred to in Article 5(4) of the Directive must contain the measures described in Annex

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			Germany to pay the costs; **3. Orders the Kingdom of Spain and the Kingdom of the Netherlands to bear their own costs.**	III thereto. In order to calculate the maximum allowed amount of livestock manure which may be applied, it is necessary to identify the moment at which the calculation of the nitrogen content of livestock manure must be made for the purposes of the Directive. The first thing to be observed in this regard is that, whilst the first paragraph of point 2 of Annex III to the Directive (`amount of livestock manure applied to the land') is not without ambiguity, the definition of `land application' in Article 2(h) of the Directive makes no distinction between the beginning and the end of the application process. The Directive does not therefore expressly identify the moment at which the nitrogen content of the livestock manure planned to be applied should be calculated in order to ensure that the maximum permissible amounts of nitrogen to be applied to the land each year are not exceeded. Next, it must be remembered that the Directive seeks to create the instruments needed in order to ensure that watercourses in the Community are protected against pollution caused by nitrates from agricultural sources (see Case C-293/97 Standley and Others [1999] ECR I-2603, paragraph 39). Thus, the Member States must define vulnerable zones (Article 3), encourage good agricultural practices (Article 4) and draw up and implement programmes to reduce water pollution caused by nitrogen compounds in those zones (Article 5). Given both the context and objectives of the Directive, it must be concluded that the decisive criterion which the

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				Directive lays down for limiting pollution by nitrates from agricultural sources is the amount of nitrogen applied to the land by spreading on its surface, by injection into the land, by placing below the surface of the land or by mixing with the surface layers of the land, and not the amount of nitrogen actually penetrating into the land. It follows that, in providing for the use of another criterion for calculating the maximum permissible amount of livestock manure to be applied each year per hectare, the Düngeverordnung is not in accordance with the Directive. The amounts quoted in point 2 of Annex III to the Directive are in fact fixed absolutely, whilst point 1(3)(c) of Annex III provides for a limitation of fertiliser amounts directly in relation to the fertiliser requirements of crops and states that fertiliser application must in any event be limited to the amounts allowing a balance to be preserved between the nitrogen requirements of crops and the amount of nitrogen available overall in the soil. The latter limitation does not take precedence over the limitation concerning maximum permissible amounts, which is absolute in character, even though the principle of balance thus does not operate in certain particular cases. So, even if the limitation set by the balance principle could at first produce an amount of nitrogen lower or higher than 170 kg, or, in certain defined cases, 210 kg per year per hectare, the maximum amount rules would preclude application to the land of more than the aforementioned amounts. Consequently, it must be held that, by failing to adopt all the laws, regulations and administrative provisions necessary in order to comply with the obligations laid

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				down in Article 5(4)(a) and point 2 of Annex III to the Directive, the Federal Republic of Germany has failed to fulfil its obligations under the Directive. See the full text of the judgement
Council Directive 91/676/EEC of 12 December 1991 concerning the protection of waters against pollution caused by nitrates from agricultural sources	Case C-258/00 under Article 226 EC Treaty	Commission of the European Communities, applicant, v French Republic, defendant, supported by Kingdom of Spain, intervener	**On those grounds, THE COURT (Sixth Chamber) hereby:** **1. Declares that, by failing to take the appropriate steps to identify waters affected by pollution and, consequently, to designate the corresponding vulnerable zones, in accordance with Article 3 of and Annex I to Council Directive 91/676/EEC of 12 December 1991 concerning the protection of waters against pollution caused by nitrates from agricultural sources, the French Republic has failed to fulfil its obligations under that directive;** **2. Orders the French Republic to pay the costs;** **3. Orders the Kingdom of Spain to bear its own costs.**	**Conclusion Summary** APPLICATION for a declaration that, by failing to take the appropriate steps to identify waters affected by pollution and, consequently, to designate the corresponding vulnerable zones, in accordance with Article 3 of and Annex I to Council Directive 91/676/EEC of 12 December 1991 concerning the protection of waters against pollution caused by nitrates from agricultural sources (OJ 1991 L 375, p. 1), the French Republic has failed to fulfil its obligations under that directive. Findings of the Court 64. It should be noted at the outset that, in the written pleadings which it submitted to the Court, the French Government admits that there is, in the Seine bay, both enrichment by nitrogen compounds, which it does not deny are of agricultural origin, and accelerated growth of algae and of higher forms of plant life. In addition, it admits that it cannot be excluded that the persistence of certain phenomena which can be characterised as a disturbance to the balance of organisms present in the water or to the quality of the water makes it possible to consider that the Seine bay fulfils certain criteria for eutrophication. 65. It considers, none the less, in the light of the relevant objective and scientific criteria, that that zone need not be

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				identified as eutrophic within the meaning of the Directive. 66. However, as is clear from paragraphs 45 to 54 of this judgment, the interpretation given to the concept of eutrophication by the French authorities and the method which they have adopted to identify the waters affected by pollution are too restrictive and, consequently, incompatible with the Directive. 67. In addition, even if the phenomenon of eutrophication is not evident in the Seine bay itself, it is none the less the case that that zone contributes to the eutrophication of the North Sea, which is, as the fourth recital to the Directive indicates, a zone requiring special protection. 68. As is evident from the reasoned opinion, the eutrophication of the eastern part of the North Sea, of northern France and of Norway has its origin in the discharge of nutrients, inter alia nitrogen, by all the basins draining into the North Sea and the eastern part of the English Channel. The Seine alone produces an annual flow of over 100 000 tonnes of nitrogen, two thirds of agricultural origin, in a total flow of 400 000 tonnes a year going from the Channel to the North Sea. 69. It is not in dispute in the present case that the nitrate levels of the water in the Seine bay are high and that, in the salt water of the North Sea, nitrogen is the most important limiting factor in the growth of algae and of higher forms of plant life. 70 In the light of the preceding considerations, it must be concluded that, by failing to take the appropriate steps to identify waters affected by pollution and, consequently, to designate the corresponding vulnerable zones, in accordance with Article 3 of and Annex I to the Directive,

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				the French Republic has failed to fulfil its obligations under that directive. **See the full text of the judgement**
Council Directive 91/676/EEC of 12 December 1991 concerning the protection of waters against pollution caused by nitrates from agricultural sources	Case C-266/00 under Article 226 EC Treaty	Commission of the European Communities, applicant v Grand Duchy of Luxemburg, defendant	**On those grounds, THE COURT (Third Chamber) hereby:** **1. Declares that, by failing to adopt all the laws, regulations and administrative provisions necessary in order to comply with the obligations laid down in Article 5(4) and (6), and Article 10(1), in conjunction with Annex II A, Annex III 1, point 3, and Annex V 4(e), to Council Directive 91/676/EEC of 12 December 1991 concerning the protection of waters against pollution caused by nitrates from agricultural sources, the Grand Duchy of Luxembourg has failed to fulfil its obligations under that directive;** **2. Orders the Grand Duchy of Luxembourg to pay the costs.**	**Conclusion Summary** In accordance with the third paragraph of Article 249 EC, a directive is binding, as to the results to be achieved, upon each Member State to which it is addressed. This obligation entails compliance with the time-limits set by directives (Case 10/76 Commission v Italy [1976] ECR 1359, paragraph 12). As regards the Commission's first complaint, it must be stated, first, that the Grand-Ducal Regulation relates only to the use of organic fertiliser in agriculture. It does not therefore relate to chemical fertilisers, even though they are covered, by virtue of Article 2(f) of the Directive, by the obligations laid down in the Directive. Next, none of the national regulations to which the Luxembourg Government referred during the pre-litigation procedure in order to show that it had complied with its obligations contains provisions which are sufficiently precise in order to meet the obligation in Annex III 1, point 3, to the Directive to establish a balance between, on the one hand, the foreseeable nitrogen requirements of crops and, on the other, the nitrogen supply to the crops, in particular by the addition of nitrogen compounds from chemical fertilisers. Lastly, none of the Luxembourg regulations to which the Luxembourg Government referred during the pre-litigation procedure meets the obligation laid down in Article 5(4), in conjunction with Annex II A, point 4, to the Directive relating to the conditions, such as the distance, to be

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				observed when applying chemical fertiliser close to water courses, with a sufficient degree of precision to ensure that, in the particular context of the application of such fertiliser, water courses will not be polluted. It follows from the foregoing that the Commission's first complaint is well founded. As regards the Commission's second complaint, it suffices to state that, by failing to lay down rules regarding the conditions for the land application of fertiliser to steeply sloping ground, irrespective of climatic conditions, the Grand Duchy of Luxembourg has failed to comply with the requirements of Article 5(4), in conjunction with Annex II A, point 2, and Annex III 1, point 3(a), to the Directive. As to the Commission's third complaint, it should be pointed out that Article 5(4), in conjunction with Annex II A, point 3, to the Directive, requires measures aiming to limit land application of fertiliser to snow-covered ground. Since there is no reason to believe that the likely risks of pollution where fertiliser is applied on snow-covered ground are lower when snow has been lying for less than 24 hours, the Grand-Ducal Regulation must be regarded as having failed to fulfil the obligations laid down in those provisions of the Directive. 35. As regards the Commission's fourth complaint, it is clear from the documents in the case that the information sent by the Luxembourg Government does not prove that the Grand-Duchy of Luxembourg has a monitoring system which covers all the surface and subterranean waters exposed to intensive agricultural pressure and which allows the spread of pollution and the impact of the action programmes to be assessed. Moreover, the information

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				provided does not show that the eutrophic state of Luxembourg waters is monitored. Furthermore, no evidence to show the existence of a monitoring programme was sent to the Commission by the date fixed in the supplementary reasoned opinion. Finally, the competent authorities did not, by that same date, finalise a model for assessing the effectiveness of the action programmes, so that they are unable to comply with the assessment obligation laid down in Article 5(6) of the Directive. 36. In those circumstances, the Commission's fourth complaint is well founded. 37. Finally, as regards the Commission's fifth complaint, it is clear from the documents before the Court that at the end of the period fixed by the supplementary reasoned opinion the Grand Duchy of Luxembourg merely informed the Commission that a study had been commissioned in order to evaluate the effectiveness of the provisions provided for under the Directive and that this study had not yet been submitted to the Commission. It follows that this complaint, based on failure to comply with Article 10(1), in conjunction with Annex V 4(e), to the Directive, is well founded. 38. It must therefore be held that, by failing to adopt all the laws, regulations and administrative provisions necessary to comply with the obligations laid down in Article 5(4) and (6), and Article 10(1), in conjunction with Annex II A, Annex III 1, point 3, and Annex V 4(e), to the Directive, the Grand Duchy of Luxembourg has failed to fulfil its obligations under the Directive. **See the full text of the judgement**

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Council Directive 91/676/EEC of 12 December 1991 concerning the protection of waters against pollution caused by nitrates from agricultural sources	Case C-322/00 under Article 226 EC Treaty	Commission of the European Communities, applicant v Kingdom of the Netherlands, defendant	**On those grounds, THE COURT (Sixth Chamber) hereby:** **1. Declares that by failing to adopt the necessary laws, regulations and administrative provisions laid down in:** **- Article 5(4)(a) of Council Directive 91/676/EEC of 12 December 1991 concerning the protection of waters against pollution caused by nitrates from agricultural sources, in conjunction with paragraph 1(2) and (3) and paragraph 2 of Annex III thereto;** **- Article 5(4)(b) of the Directive, in conjunction with Article 4(1)(a) thereof and paragraphs A(1), (2), (4) and (6) of Annex II thereto; and** **- Article 5(5) of the Directive,** **the Kingdom of the Netherlands has failed to fulfil its obligations under the Directive;** **2. Orders the Kingdom of the Netherlands to pay the costs.**	**Conclusion Summary** After it had examined the Netherlands implementing measures, the Commission took the view that the Kingdom of the Netherlands had not fulfilled its obligations under: - Article 5(4)(a) of the Directive, in conjunction with paragraph 1(2) and (3) and paragraph 2 of Annex III; - Article 5(4)(b) of the Directive, in conjunction with paragraphs A(1), (2), (4) and (6) of Annex II, and - Article 5(5) of the Directive. The Directive seeks to create the instruments needed to ensure that waters in the Community are protected against pollution caused by nitrates from agricultural sources (Case C-293/97 Standley and Others [1999] ECR I-2603, paragraph 39, and Case C-161/00 Commission v Germany [2002] ECR I-2753, paragraph 42). Therefore, as the Commission has pointed out, the final part of paragraph 1(2) of Annex III to the Directive must be interpreted as not enabling Member States to depart from their obligation under the Directive to adopt binding laws or regulations as regards storage capacity for livestock manure on farms, but as merely allowing them to authorise certain farms to depart from the minimum standard set by those provisions, on a case-by-case basis, to the extent that it is demonstrated that the livestock manure which cannot be stored on the farm will be disposed of in a manner which will not cause harm to the environment. When establishing the balance required under paragraph 1(3) of Annex III to the Directive, it is necessary to take into account all nitrogen inputs and outputs. Since papilionaceous plants are able to fix nitrogen, the Directive

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				requires that they be taken into account. In the light of the fact that, as is apparent from paragraphs 71 to 78 of this judgment, the Kingdom of the Netherlands has not met its obligation to include in the action programme the mandatory measures referred to in paragraph 1(3) of Annex III to the Directive, since the loss standards established under the MINAS system do not correctly implement the Directive in that regard, it follows that that system also cannot ensure compliance with the limits on the land application of livestock manure resulting from paragraph 2 of Annex III. The wording of paragraph 2 of Annex III to the Directive makes it clear that this provision requires use standards to be fixed so that Member States may lay down in advance that the amount of livestock manure applied to land is not to exceed the amount per hectare allowed. In any event, it is apparent from the documents before the Court that the Netherlands authorities applied for a derogation pursuant to paragraph 2(b) of Annex III to the Directive only in April 2000, that is to say, well after the period for applying the first action programme. It follows that the argument of the Netherlands Government that the exceeding of the amounts of livestock manure authorised for application to land was covered by the derogation laid down in that provision cannot be accepted. **See the full text of the judgement**

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WASTE				
Council Directive 75/442/EEC of 15 July 1975 on waste Council Directive 78/319/EEC of 20 March 1978 on toxic and dangerous waste	Case C-359/88 under Article 177 of the EEC Treaty	The Pretura (Magistrate' s Court), San Vito al Tagliamento, Italy, for a preliminary ruling in the criminal proceedings pending before that court v E . Zanetti and Others	**On those grounds, THE COURT (First Chamber), in answer to the questions referred to it by the Pretura di San Vito al Tagliamento, by order of 14 July 1988, hereby rules :** **(1) National legislation which defines waste as excluding substances and objects which are capable of economic reutilization is not compatible with Council Directives 75/442/EEC and 78/319/EEC.** **(2) National legislation which does not make the transport of waste covered by Council Directive 75/442/EEC subject to a system of prior authorization is compatible with Article 10 of that directive. However, the Member States may make the transport of waste covered by that directive subject to a system of prior authorization if they consider this necessary in order to achieve the aims of the directive.** **(3) The vesting in authorities which do not have competence at the national level of the power to issue authorizations for the transport of waste is compatible with Article 5 of Council Directive 75/442/EEC.**	**Conclusion Summary** 1. National legislation which defines waste as excluding substances and objects which are capable of economic reutilization is not compatible with Directives 75/442 and 78/319. 2. National legislation which does not make the transport of waste covered by Directive 75/442 subject to a system of prior authorization is compatible with Article 10 of that directive. However, the Member States may make the transport of waste covered by that directive subject to a system of prior authorization if they consider this necessary in order to achieve the aims of the directive. The vesting in authorities which do not have competence at the national level of the power to issue authorizations for the transport of waste is compatible with Article 5 of the directive. **See the full text of the judgement**

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Council Directive 91/156/EEC of 18 March 1991, amending Directive 75/442/EC on Council Directive 91/689/EEC of 12 December 1991 on hazardous waste Council Regulation (EEC) No 259/93 of 1 February 1993 on the supervision and control of shipments of waste within, into and out of the European Community	Joined Cases C-304/94, C-330/94, C-342/94 and C-224/95 under Article 177 of the EC Treaty	The Pretura Circondariale di Terni (Cases C-304/94, C-330/94, C-342/94) and the Pretura Circondariale di Pescara (C-224/95) v Euro Tombesi and Adino Tombesi (C-304/94), Roberto Santella (C-330/94), Giovanni Muzi and Others (C-342/94), Anselmo Savini (C-224/95)	**On those grounds, THE COURT (Sixth Chamber), in answer to the questions referred to it by the Pretura Circondariale di Terni and the Pretura Circondariale di Pescara by order of 27 October, 14 November, 23 November and 15 December 1994, hereby rules:** **The concept of `waste' in Article 1 of Council Directive 75/442/EEC of 15 July 1975 on waste, as amended by Council Directive 91/156/EEC of 18 March 1991, referred to in Article 1(3) of Council Directive 91/689/EEC of 12 December 1991 on hazardous waste and Article 2(a) of Council Regulation (EEC) No 259/93 of 1 February 1993 on the supervision and control of shipments of waste within, into and out of the European Community, is not to be understood as excluding substances and objects which are capable of economic reutilization, even if the materials in question may be the subject of a transaction or quoted on public or private commercial lists. In particular, a deactivation process intended merely to render waste harmless, landfill tipping in hollows or embankments and waste incineration constitute disposal or recovery operations falling within the scope of the abovementioned Community rules. The fact that a substance is classified as a re-usable residue without its characteristics or purpose being defined is irrelevant in that regard. The same applies to the grinding of a waste substance.**	**Conclusion Summary** 3. (7) Article 2(a) of Regulation No 259/93 on the supervision and control of shipments of waste within, into and out of the European Community, provides, in Title I (`Scope and definitions'), that, for the purposes of the regulation, `waste' means the substances or objects defined in Article 1(a) of Directive 75/442, as amended. That common definition of waste, which was introduced in order to ensure that the national systems for supervision and control of shipments of waste conform with minimum criteria, applies directly to shipments of waste within any Member State. 4. (8) The concept of `waste' in Council Directive 75/442, as amended by Directive 91/156, referred to in Article 1(3) of Council Directive 91/689 on hazardous waste and Article 2(a) of Regulation No 259/93 on the supervision and control of shipments of waste within, into and out of the European Community, is not to be understood as excluding substances and objects which are capable of economic reutilization, even if the materials in question may be the subject of a transaction or quoted on public or private commercial lists. In particular, a deactivation process intended merely to render waste harmless, landfill tipping in hollows or embankments and waste incineration constitute disposal or recovery operations falling within the scope of the abovementioned Community rules. The fact that a substance is classified as a re-usable residue without its characteristics or purpose being defined is irrelevant in that regard. The same applies to the grinding of a waste substance. **See the full text of the judgement**

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Council Directive 75/442/EEC of 15 July 1975 on waste, as amended by Council Directive 91/156/EEC of 18 March 1991	Case C-129/96 under Article 177 of the EC Treaty	Inter-Environnement Wallonie ASBL v Région Wallonne	**On those grounds, THE COURT, in answer to the questions referred to it by the Belgian Conseil d'État by judgment of 29 March 1996, hereby rules: 1. A substance is not excluded from the definition of waste in Article 1(a) of Council Directive 75/442/EEC of 15 July 1975 on waste, as amended by Council Directive 91/156/EEC of 18 March 1991, merely because it directly or indirectly forms an integral part of an industrial production process. 2. The second paragraph of Article 5 and the third paragraph of Article 189 of the EEC Treaty, and Directive 91/156, require the Member States to which that directive is addressed to refrain, during the period laid down therein for its implementation, from adopting measures liable seriously to compromise the result prescribed**	**Conclusion Summary** The Belgian Conseil d'État referred to the Court for a preliminary ruling under Article 177 of the EC Treaty two questions on the interpretation of Articles 5 and 189 of the EEC Treaty and Article 1(a) 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 Conseil d'État has referred the following questions to the Court for a preliminary ruling: (1) Do Articles 5 and 189 of the EEC Treaty preclude Member States from adopting a provision contrary to Directive 75/442/EEC of 15 July 1975 on waste, as amended by Directive 91/156/EEC of 18 March 1991, before the period for transposing the latter has expired? Do those same Treaty articles preclude Member States from adopting and bringing into force legislation which purports to transpose the abovementioned directive but whose provisions appear to be contrary to the requirements of that directive? (2) Is a substance referred to in Annex I to Council Directive 91/156/EEC of 18 March 1991 amending Directive 75/442/EEC on waste and which directly or indirectly forms an integral part of an industrial production process to be considered "waste" within the meaning of Article 1(a) of that directive?' Question 2 25. By its second question, which it is appropriate to consider first, the national court is in essence asking whether a substance is excluded from the definition of waste in Article 1(a) of Directive 75/442, as amended, merely because it directly or indirectly forms an integral part of an industrial production process. First of all, it follows from the wording of Article 1(a) of

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				Directive 75/442, as amended, that the scope of the term `waste' turns on the meaning of the term `discard'. It is also clear from the provisions of Directive 75/442, as amended, in particular from Article 4, Articles 8 to 12 and Annexes IIA and IIB, that the term `discard' covers both disposal and recovery of a substance or object. 29. First, Directive 75/442, as amended, applies, as is apparent in particular from Articles 9 to 11, not only to disposal and recovery of waste by specialist undertakings, but also to disposal and recovery of waste by the undertaking which produced them, at the place of production. 30. Second, while Article 4 of Directive 75/442, as amended, provides that waste is to be recovered or disposed of without endangering human health or using processes or methods which could harm the environment, there is nothing in that directive to indicate that it does not apply to disposal or recovery operations forming part of an industrial process where they do not appear to constitute a danger to human health or the environment. 31. Finally, it should be borne in mind that the Court has already held that the definition of waste in Article 1 of Directive 75/442, as amended, is not to be understood as excluding substances and objects which were capable of economic reutilization (Case C-359/88 Zanetti and Others [1990] ECR I-1509, paragraphs 12 and 13; C-422/92 Commission v Germany [1995] ECR I-1097, paragraphs 22 and 23, and Joined Cases C-304/94, C-330/94, C-342/94 and C-224/95 Tombesi and Others [1997] ECR I-3561, paragraphs 47 and 48). 32. It follows from all those considerations that substances forming part of an industrial process may constitute waste within the meaning of Article 1(a) of Directive 75/442, as amended. 33. That conclusion does not undermine the distinction which must be drawn, as the Belgian, German, Netherlands and United Kingdom Governments have correctly submitted, between waste recovery within the meaning of Directive 75/442, as amended, and normal industrial treatment of products which are not waste,

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				no matter how difficult that distinction may be. 34. The answer to the second question must therefore be that a substance is not excluded from the definition of waste in Article 1(a) of Council Directive 75/442, as amended, by the mere fact that it directly or indirectly forms an integral part of an industrial production process. 50. The answer to the first question must therefore be that the second paragraph of Article 5 and the third paragraph of Article 189 of the EEC Treaty, and Directive 91/156, require the Member States to which that directive is addressed to refrain, during the period laid down therein for its implementation, from adopting measures liable seriously to compromise the result prescribed. **See the full text of the judgement**
Council Directive 75/442/EEC of 15 July 1975 on waste, as amended by Council Directive 91/156/EEC of 18 March 1991	Joined Cases C-418/97 and C-419/97 under Article 177 of the EC Treaty (now Article 234 EC)	ARCO Chemie Nederland Ltd v Minister van Volkshuisvesting, Ruimtelijke Ordening en Milieubeheer (C-418/97) and between Vereniging Dorpsbelang Hees, Stichting Werkgroep Weurt+, Vereniging	**On those grounds, THE COURT (Fifth Chamber), in answer to the questions referred to it by the Nederlandse Raad van State by orders of 25 November 1997, hereby rules:** **Case C-418/97** **1. It may not be inferred from the mere fact that a substance such as LUWA-bottoms undergoes an operation listed in Annex IIB to Council Directive 75/442/EEC of 15 July 1975 on waste, as amended by Council Directive 91/156/EEC of 18 March 1991, that that substance has been discarded so as to enable it to be regarded as waste for the purposes of that directive.** **2. For the purpose of determining whether the use of a substance such as LUWA-bottoms as a fuel is to be regarded as**	**Conclusion Summary** 1. In the absence of Community provisions, Member States are free to chose the modes of proof of the various matters defined in the directives which they transpose, provided that the effectiveness of Community law is not thereby undermined. The effectiveness of Article 130r of the Treaty (now, after amendment, Article 174 EC) and Directive 75/442 on waste, as amended by Directive 91/156, would be undermined if the national legislature were to use modes of proof, such as statutory presumptions, which had the effect of restricting the scope of the directive and not covering materials, substances or products which correspond to the definition of waste within the meaning of the directive. (see paras 41-42) 2. It may not be inferred from the mere fact that a substance undergoes a recovery operation listed in Annex IIB to Directive 75/442 on waste, as amended by Directive 91/156, that that substance has been discarded so as to enable it to be regarded as

DIRECTIVE	CASE NUMBER	PARTIES	J U D G E M E N T Conclusion	Operational part of the judgement
		Stedelijk Leefmilieu Nijmegen v Directeur van de dienst Milieu en Water van de provincie Gelderland, joined party: Elektriciteitsproductiemaatschappij Oost- en Noord-Nederland NV (Epon) (C-419/97)	**constituting discarding, it is irrelevant that that substance may be recovered in an environmentally responsible manner for use as fuel without substantial treatment. The fact that that use as fuel is a common method of recovering waste and the fact that that substance is commonly regarded as waste may be taken as evidence that the holder has discarded that substance or intends or is required to discard it within the meaning of Article 1(a) of Directive 75/442, as amended by Directive 91/156. However, whether it is in fact waste within the meaning of the directive must be determined in the light of all the circumstances, regard being had to the aim of the directive and the need to ensure that its effectiveness is not undermined.** **The fact that a substance used as fuel is the residue of the manufacturing process of another substance, that no use for that substance other than disposal can be envisaged, that the composition of the substance is not suitable for the use made of it or that special environmental precautions must be taken when it is used may be regarded as evidence that the holder has discarded that substance or intends or is required to discard it within the meaning of Article 1(a) of that directive. However, whether it is in fact waste within the meaning of the directive must be determined in the light of all the circumstances, regard being had to the aim of the directive and the need to ensure that**	waste for the purposes of the directive. (see para. 51 and operative part) 3. For the purpose of determining whether the use of a substance as a fuel is to be regarded as constituting discarding, it is irrelevant that those substances may be recovered in an environmentally responsible manner for use as fuel without substantial treatment. The fact that that use as fuel is a common method of recovering waste and the fact that those substances are commonly regarded as waste may be taken as evidence that the holder has discarded those substances or intends or is required to discard them within the meaning of Article 1(a) of Directive 75/442 on waste, as amended by Directive 91/156. However, whether they are in fact waste within the meaning of the directive must be determined in the light of all the circumstances, regard being had to the aim of the directive and the need to ensure that its effectiveness is not undermined. (see paras 72-73 and operative part) 4. The fact that a substance used as fuel is the residue of the manufacturing process of another substance, that no use for that substance other than disposal can be envisaged, that the composition of the substance is not suitable for the use made of it or that special environmental precautions must be taken when it is used may be regarded as evidence that the holder has discarded that substance or intends or is required to discard it within the meaning of Article 1(a) of Directive 75/442 on waste, as amended by Directive 91/156. However, whether it is in fact waste within the meaning of the directive must be determined in the light of all the circumstances, regard being had to the aim of the directive and the need to ensure that its effectiveness is not undermined. (see para. 88 and operative part) 5. The fact that a substance is the result of a recovery operation within the meaning of Annex IIB to Directive 75/442 on waste, as amended by Directive 91/156, is only one of the factors which

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			its effectiveness is not undermined. **Case C-419/97** **3. It may not be inferred from the mere fact that a substance such as wood chips undergoes an operation listed in Annex IIB to Directive 75/442, as amended by Directive 91/156, that that substance has been discarded so as to enable it to be regarded as waste for the purposes of the directive.** **4. The fact that a substance is the result of a recovery operation within the meaning of Annex IIB to that directive is only one of the factors which must be taken into consideration for the purpose of determining whether that substance is still waste, and does not as such permit a definitive conclusion to be drawn in that regard. Whether it is waste must be determined in the light of all the circumstances, by comparison with the definition set out in Article 1(a) of Directive 75/442, as amended by Directive 91/156, that is to say the discarding of the substance in question or the intention or requirement to discard it, regard being had to the aim of the directive and the need to ensure that its effectiveness is not undermined.** **For the purpose of determining whether the use of a substance such as wood chips as a fuel is to be regarded as constituting discarding, it is irrelevant that that substance may be recovered in an environmentally responsible manner for**	must be taken into consideration for the purpose of determining whether that substance is still waste, and does not as such permit a definitive conclusion to be drawn in that regard. Whether it is waste must be determined in the light of all the circumstances, by comparison with the definition set out in Article 1(a) of the directive, that is to say the discarding of the substance in question or the intention or requirement to discard it, regard being had to the aim of the directive and the need to ensure that its effectiveness is not undermined. (see para. 97 and operative part) **See the full text of the judgement**

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			use as fuel without substantial treatment. The fact that that use as fuel is a common method of recovering waste and the fact that that substance is commonly regarded as waste may be taken as evidence that the holder has discarded that substance or intends or is required to discard it within the meaning of Article 1(a) of Directive 75/442, as amended by Directive 91/156. However, whether it is in fact waste within the meaning of that directive must be determined in the light of all the circumstances, regard being had to the aim of the directive and the need to ensure that its effectiveness is not undermined.	
Council Directive 75/442/EEC of 15 July 1975 on waste, as amended by Council Directive 91/156/EEC of 18 March 1991	Case C-9/00 under Article 234 EC Treaty	Korkein hallinto-oikeus (Finland) for a preliminary ruling in the proceedings pending before that court instituted by Palin Granit Oyand Vehmassalon kansanterveystyön kuntayhtymän hallitus,	**On those grounds, THE COURT (Sixth Chamber), in answer to the questions referred to it by the Korkein hallinto-oikeus by order of 31 December 1999, hereby rules: 1. The holder of leftover stone resulting from stone quarrying which is stored for an indefinite length of time to await possible use discards or intends to discard that leftover stone, which is accordingly to be classified as waste within the meaning of Council Directive 75/442/EEC of 15 July 1975 on waste. 2. The place of storage of leftover stone, its composition and the fact, even if proven, that the stone does not pose any real risk to human health or the environment are not relevant criteria for determining whether the stone is to be regarded as waste.**	**Conclusion Summary** 1. By order of 31 December 1999, received at the Court on 13 January 2000, the Korkein hallinto-oikeus (Supreme Administrative Court) (Finland) referred to the Court for a preliminary ruling under Article 234 EC one main question and four sub-questions on the interpretation 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, hereinafter `Directive 75/442').  21. In order to determine which authority is competent to grant Palin Granit the environmental licence sought by it, the Korkein hallinto-oikeus decided to stay the proceedings and refer the following questions to the Court for a preliminary ruling: `Is leftover stone resulting from stone quarrying to be regarded as waste within the meaning of Article 1(a) of Council Directive 75/442/EEC of 15 July 1975 on waste, as amended by Council Directive 91/156/EEC of 18 March 1991, having regard to points

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				(a) to (d) below? (a) What relevance, in deciding the above question, does it have that the leftover stone is stored on a site adjoining the place of quarrying to await subsequent use? Is it relevant generally whether it is stored on the quarrying site, a site next to it or further away? (b) What relevance does it have that the leftover stone is the same as regards its composition as the basic rock from which it has been quarried, and that it does not change its composition regardless of how long it is kept or how it is kept? (c) What relevance does it have that the leftover stone is harmless to human health and the environment? To what extent generally is importance to be attached to its possible effect on health and the environment in assessing whether it is waste? (d) What relevance does it have that the intention is to transfer the leftover stone in whole or in part away from the storage site for use, for example for landfill or breakwaters, and that it could be recovered as such without processing or similar measures? To what extent in this connection should attention be paid to how definite the plans are which the holder of the leftover stone has for such use and to how soon after the leftover stone has been deposited on the storage site the use takes place?' The main question 22. In the first subparagraph of Article 1(a) of Directive 75/442 waste is defined as `any substance or object in the categories set out in Annex I which the holder discards or intends or is required to discard'. Annex I and the EWC clarify and illustrate that definition, by providing lists of substances and objects which may be classified as waste. However, those lists are only intended as guidance and the classification of a substance or object as waste is, as the Commission rightly submits, primarily to be inferred from the holder's actions, which depend on whether or not he intends to discard the substances in question. Therefore, the scope of the term `waste' turns on the meaning of the term `discard' (Case C-129/96 Inter-Environnement Wallonie

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				[1997] ECR I-7411, paragraph 26). 24. More specifically, the question whether a given substance is waste must be determined in the light of all the circumstances, regard being had to the aim of Directive 75/442 and the need to ensure that its effectiveness is not undermined (ARCO Chemie Nederland, paragraphs 73, 88 and 97). The storage of leftover stone at the place of extraction or at a storage site thus constitutes either a disposal or recovery operation. 27. However, the distinction between waste disposal or recovery operations and the treatment of other products is often difficult to discern. Accordingly, the Court has already held that it may not be inferred from the fact that a substance undergoes an operation referred to in Annex II B to Directive 75/442 that that substance has been discarded and may therefore be regarded as waste (the judgment in ARCO Chemie Nederland, paragraph 82). The application of an operation listed in Annex II A or II B to Directive 75/442 therefore does not, of itself, justify the classification of that substance as waste. In its judgment in Vessoso and Zanetti (Joined Cases C-206/88 and C-207/88 [1990] ECR I-1461, paragraph 9), the Court held that the concept of waste does not exclude substances and objects which are capable of economic reutilisation. In Joined Cases C-304/94, C-330/94, C-342/94 and C-224/95 Tombesi and Others [1997] ECR I-3561, paragraph 52, the Court also stated that the system of supervision and control established by Directive 75/442, as amended, is intended to cover all objects and substances discarded by their owners, even if they have a commercial value and are collected on a commercial basis for recycling, reclamation or reuse. 30. Neither the fact that the leftover stone has undergone a treatment operation referred to in Directive 75/442 nor the fact

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				that it can be reused thus suffices to show whether that stone is waste for the purposes of Directive 75/442. 31. There are other considerations which are more decisive. 32. At paragraphs 83 to 87 of the judgment in ARCO Chemie Nederland, the Court pointed out the importance of determining whether the substance is a production residue, that is to say, a product not in itself sought for a subsequent use. According to its ordinary meaning, waste is what falls away when one processes a material or an object and is not the end-product which the manufacturing process directly seeks to produce. 33. Therefore, it appears that leftover stone from extraction processes which is not the product primarily sought by the operator of a granite quarry falls, in principle, into the category of `[r]esidues from raw materials extraction and processing' under head Q 11 of Annex I to Directive 75/442. 34. One counter-argument to challenge that analysis is that goods, materials or raw materials resulting from a manufacturing or extraction process, the primary aim of which is not the production of that item, may be regarded not as a residue but as a by-product which the undertaking does not wish to `discard', within the meaning of the first paragraph of Article 1(a) of Directive 75/442, but intends to exploit or market on terms which are advantageous to it, in a subsequent process, without any further processing prior to reuse. 35. Such an interpretation would not be incompatible with the aims of Directive 75/442. There is no reason to hold that the provisions of Directive 75/442 which are intended to regulate the disposal or recovery of waste apply to goods, materials or raw materials which have an economic value as products regardless of any form of processing and which, as such, are subject to the legislation applicable to those products. 37. It therefore appears that, in addition to the criterion of

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				whether a substance constitutes a production residue, a second relevant criterion for determining whether or not that substance is waste for the purposes of Directive 75/442 is the degree of likelihood that that substance will be reused, without any further processing prior to its reuse. If, in addition to the mere possibility of reusing the substance, there is also a financial advantage to the holder in so doing, the likelihood of reuse is high. In such circumstances, the substance in question must no longer be regarded as a burden which its holder seeks to `discard', but as a genuine product. 39. The answer to the main question asked by the national court must therefore be that the holder of leftover stone resulting from stone quarrying which is stored for an indefinite length of time to await possible use discards or intends to discard that leftover stone, which is accordingly to be classified as waste within the meaning of Directive 75/442. Sub-questions (a) and (d) 41. In any event, under Article 11 of Directive 75/442, it remains possible for national authorities to lay down rules providing for exemptions from the permit requirement and to grant such exemptions in respect of disposal and recovery operations for certain waste, and for national courts to ensure that those rules are observed in accordance with the aims of Directive 75/442. 42. As regards sub-question (a), it should be observed that, in view of the answer which has just been given to the main question, the place of storage of the leftover stone, whether it be on the quarrying site, at a place next to it or further away, is not relevant to its classification as waste. Similarly, the conditions under which the materials are kept and the length of time for which they are kept do not, of themselves, provide any indication of either their value to the undertaking or the advantages which that undertaking may derive from them. They do not show whether or not the holder intends to discard the materials.

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				43. With respect to sub-question (b), it must be borne in mind that at paragraph 87 of the judgment in ARCO Chemie Nederland, the Court held that the fact that a substance is a production residue whose composition is not suitable for the use made of it or that special precautions must be taken when it is used owing to the environmentally hazardous nature of its composition may constitute evidence that the holder has discarded the substance, or intends or is required to discard it within the meaning of Article 1(a) of Directive 75/442. 44. The fact that the leftover stone has the same composition as the blocks of stone extracted from the quarry and that its physical state does not change may accordingly render it suitable for the uses which could be made of it. However, that argument would be decisive only if all the leftover stone were reused. There is no doubt that the commercial value of blocks of stone depends on their size, shape and potential uses in the construction sector, qualities which the leftover stone, despite having an identical composition, does not possess. That leftover stone is therefore still production residue. 46. In any event, even where a substance undergoes a full recovery operation and thereby acquires the same properties and characteristics as a raw material, it may nevertheless be regarded as waste if, in accordance with the definition in Article 1(a) of Directive 75/442, its holder discards it, or intends or is required to discard it. 47. As regards sub-question (c), it should be observed that the fact that the leftover stone does not pose any risk to public health or the environment also does not preclude its classification as waste. 48. First of all, Directive 75/442 on waste is supplemented by Council Directive 91/689/EEC of 12 December 1991 on hazardous waste (OJ 1991 L 377, p. 20), which implies that the concept of waste does not turn on the hazardous nature of a substance.

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				49. Next, even assuming that the leftover stone does not, by virtue of its composition, pose any risk to human health or the environment, stockpiling such stone is necessarily a source of harm to, and pollution of, the environment, since the full reuse of the stone is neither immediate nor even always foreseeable. 50. Finally, the harmlessness of the substance in question is not a decisive criterion for determining what its holder intends to do with it. 51. The answer to the national court's sub-questions must therefore be that the place of storage of leftover stone, its composition and the fact, even if proven, that the stone does not pose any real risk to human health or the environment are not relevant criteria for determining whether the stone is to be regarded as waste. **See the full text of the judgement**
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	Case C-114/01 under Article 234 EC Treaty	AvestaPolarit Chrome Oy, formerly Outokumpu Chrome Oy	**On those grounds, THE COURT (Sixth Chamber),** **in answer to the questions referred to it by the Korkein hallinto-oikeus by order of 5 March 2001, hereby rules:** **1. In a situation such as that at issue in the main proceedings, the holder of leftover rock and residual sand from ore-dressing operations from the operation of a mine discards or intends to discard those substances, which must consequently be classified as waste within the meaning of Council Directive 75/442/EEC of 15 July 1975 on waste, as amended by Council Directive 91/156/EEC of 18 March 1991, unless he uses them lawfully for the necessary filling in of the galleries of that mine and provides sufficient guarantees as**	**Conclusion Summary** 30. In those circumstances, the Korkein hallinto-oikeus decided to stay the proceedings and refer the following questions to the Court for a preliminary ruling: (1) Are leftover rock resulting from the extraction of ore and/or ore-dressing sand resulting from the dressing of ore in mining operations to be regarded as waste within the meaning of Article 1(a) of Council Directive 75/442/EEC of 15 July 1975 on waste, as amended by Council Directive 91/156/EEC of 18 March 1991, having regard to points (a) to (d) below? (a) What relevance, in deciding the above question, does it have that the leftover rock and ore-dressing sand is stored in the mining area or on the ancillary site? Is it relevant generally, with respect to falling within the definition of waste, whether the said by-products of mining operations are stored in the mining area, on the ancillary site or further away? (b) What relevance does it have, in assessing the matter, that the

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			to the identification and actual use of the substances to be used for that purpose. 2. In so far as it does not constitute a measure of application of Directive 75/442, as amended by Directive 91/156, and in particular Article 11 of that directive, national legislation must be regarded as `other legislation' within the meaning of Article 2(1)(b) of that directive covering a category of waste mentioned in that provision, if it relates to the management of that waste as such within the meaning of Article 1(d) of Directive 75/442, and if it results in a level of protection of the environment at least equivalent to that aimed at by that directive, whatever the date of its entry into force	leftover rock is the same as regards its composition as the basic rock from which it is quarried, and that it does not change its composition regardless of how long it is kept and how it is kept? Should ore-dressing sand which results from the ore-dressing process perhaps be assessed differently from leftover rock in this respect? (c) What relevance does it have, in assessing the matter, that leftover rock is harmless to human health and the environment, but that, according to the view of the environmental licence authorities, substances harmful to health and the environment dissolve from ore-dressing sand? To what extent generally is importance to be attached to the possible effect of leftover rock and ore-dressing sand on health and the environment in assessing whether they are waste? (d) What relevance does it have, in assessing the matter, that leftover rock and ore-dressing sand are not intended to be discarded? Leftover rock and ore-dressing sand may be re-used without special processing measures, for example for supporting mine galleries, and leftover rock also for landscaping the mine after it has ceased operation. Minerals may in future with the development of technology be recovered from ore-dressing sand for utilisation. To what extent should attention be paid to how definite plans the person carrying on mining operations has for such utilisation and to how soon after the leftover rock and ore-dressing sand has been tipped on the mining area or the ancillary site the utilisation would take place? (2) If the answer to the first question is that leftover rock and/or ore-dressing sand is to be regarded as waste within the meaning of Article 1(a) of the Council Directive on waste, it is further necessary to obtain an answer to the following supplementary questions: (a) Does "other legislation" within the meaning of Article 2(1)(b) of the Waste Directive (91/156/EEC), waste covered by which is excluded from the scope of the directive, and which under point (ii) concerns inter alia waste resulting from prospecting,

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				extraction, treatment and storage of mineral resources, mean exclusively the European Community's own legislation? Or may national legislation too, such as certain provisions of the Law on mines and the Regulation on waste in force in Finland, be "other legislation" within the meaning of the Waste Directive? (b) If "other legislation" means also national legislation, does that mean exclusively national legislation which was already in force at the time of entry into force of the Waste Directive 91/156/EEC or also that enacted only afterwards? (c) If "other legislation" means also national legislation, do fundamental European Community provisions relating to environmental protection or the principles of the Waste Directive set requirements for national legislation concerning the level of environmental protection as a condition for misapplying the rules of the Waste Directive? What sort of requirements could those be?' The first question 31. With respect to the first question, the Korkein hallinto-oikeus previously referred a largely similar question in Case C-9/00 Palin Granit and Vehmassalon kansanterveystyön kuntayhtymän hallitus [2002] ECR I-3533 (`Palin Granit'). 32. In that judgment, which concerned not leftover rock and ore-dressing sand from a mining operation but leftover stone from a granite quarry, the Court held that: - the holder of leftover stone resulting from stone quarrying which is stored for an indefinite length of time to await possible use discards or intends to discard that leftover stone, which is accordingly to be classified as waste within the meaning of Directive 75/442; - the place of storage of leftover stone, its composition and the fact, even if proven, that the stone does not pose any real risk to human health or the environment are not relevant criteria for determining whether the stone is to be regarded as waste. The second question 47. Article 2(2) of Directive 75/442 expressly provides that

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				individual directives may regulate the management of certain categories of waste. It says that those directives may contain specific rules for particular instances or supplementing those in Directive 75/442. That means that the Community expressly reserved the possibility of enacting specific rules or more detailed ones than those in Directive 75/442 for certain categories of waste not defined in advance. That was the basis on which Council Directive 91/157/EEC of 18 March 1991 on batteries and accumulators containing certain dangerous substances (OJ 1991 L 78, p. 38) and Council Directive 91/689/EEC of 12 December 1991 on hazardous waste (OJ 1991 L 377, p. 20), for example, were adopted. 53. So, in the main proceedings, it will be for the national court to make sure if necessary, if it considers misapplying the national provisions adopted in application of Directive 75/442, that the alternative provisions of the Law on mines relied on for that purpose concern the management of mining waste and apply to the waste from the mine operated by AvestaPolarit. In the light of the documents in the case, the Court understands that that may be the case, with respect to non-hazardous soil and rock waste, if AvestaPolarit uses a procedure approved pursuant to that law. 57. Consequently, since when adopting Directive 91/156 the Community legislature considered it appropriate that, until specific Community rules were adopted on the management of certain individual categories of waste, the authorities of the Member States should retain the option of ensuring that management outside the framework laid down by Directive 75/442, and since it neither expressly excluded the possibility of that option being used on the basis of national legislation subsequent to the entry into force of Directive 91/156 nor set out considerations enabling a distinction to be drawn between such national legislation and legislation prior to that entry into force, Article 2(1)(b) of Directive 75/442 must be interpreted as meaning that `other legislation' within the meaning of that provision may have entered into force either before or after 1

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				April 1993, the date of entry into force of Directive 91/156. 60. In the main proceedings, it will thus be for the national court if need be, if it considers disapplying the national provisions taken in application of Directive 95/442, to make sure that the alternative provisions of the Law on mines relied on for that purpose result, as regards the management of mining waste, in a level of protection of the environment which is equivalent at least. Account must be taken here of the fourth recital in the preamble to Directive 91/156, which states that `in order to achieve a high level of environmental protection, the Member States must, in addition to taking action to ensure the responsible removal and recovery of waste, take measures to restrict the production of waste particularly by promoting clean technologies and products which can be recycled and reused, taking into consideration existing or potential market opportunities for recovered waste', and more particularly of the objectives defined in Articles 3(1) and 4 of Directive 75/442. 61 The answer to the second question must therefore be that, in so far as it does not constitute a measure of application of Directive 75/442, in particular Article 11 of that directive, national legislation must be regarded as `other legislation' within the meaning of Article 2(1)(b) of that directive covering a category of waste mentioned in that provision, if it relates to the management of that waste as such within the meaning of Article 1(d) of Directive 75/442, and if it results in a level of protection of the environment at least equivalent to that aimed at by that directive, whatever the date of its entry into force. **See the full text of the judgement**
Council Directive 75/442/EEC of 15 July 1975 on waste, as amended by Council Directive 91/156/EEC	Case C-365/97 under Article 169 of the Treaty (now Article 226 EC)	Commission of the European Communities, applicant,	**On those grounds, THE COURT hereby: 1. Declares that, by not taking the measures necessary to ensure that the waste discharged into the watercourse**	**Conclusion Summary** 4. Although the first paragraph of Article 4 of Directive 75/442, as amended by Directive 91/156, does not specify the actual

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of 18 March 1991		v Italian Republic, defendant	**bisecting the San Rocco valley is disposed of without endangering human health or harming the environment and by not taking the measures necessary to ensure that waste stored in a fly-tip is handed over to a private or public waste collector or a waste-disposal undertaking, the Italian Republic has failed to fulfil its obligations under the first paragraph of Article 4 and the first indent of Article 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;** **2. Dismisses the remainder of the application;** **3. Orders the Italian Republic to pay the costs.**	content of the measures which must be taken by Member States in order to ensure that waste is recovered or disposed of without endangering human health and without using processes or methods likely to harm the environment, it is none the less true that it is binding on the Member States as to the objective to be achieved, whilst leaving to the Member States a margin of discretion in assessing the need for such measures. Consequently, it cannot in principle be inferred directly from the fact that a situation is not in conformity with the objectives laid down in the first paragraph of Article 4 of Directive 75/442, as amended, that the Member State concerned has failed to fulfil its obligation under that provision. However, if that situation persists and, 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, it may be an indication that the Member States have exceeded the discretion conferred on them by that provision. 5. In infringement proceedings, it is incumbent upon the Commission to prove the allegation that the obligation has not been fulfilled, but in cases where it has produced sufficient evidence of the infringement alleged, it is for the Member State in question to challenge in substance and in detail the data produced and the inferences drawn, failing which the allegations must be regarded as proven. 6. In the context of the investigations in which the Commission seeks to establish whether or not Community law has been infringed, it is primarily for the national authorities to conduct the necessary on-the-spot investigations, in a spirit of genuine cooperation and in accordance with the duty, incumbent on each Member State under Article 5 of the Treaty (now Article 10 EC), to facilitate attainment of the general task of the Commission, which is to ensure that the provisions of the Treaty, as well as provisions adopted thereunder by the institutions, are applied. 7. Article 8 of Directive 75/442 on waste, as amended by Directive 91/156, places Member States under an obligation to

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				take the steps necessary to ensure that waste is handed over to a private or public waste collector or a waste-disposal undertaking, where it is not possible for the operator holding the waste to recover the waste or to dispose of it. Thus, where a Member State has merely ordered sequestration of an illegal tip and prosecution of the operator of that tip (who, on receiving consignments of waste, becomes the holder of that waste), it fails to fulfil the specific obligation imposed on it by the above provision. **See the full text of the judgement**
Council Directive 75/442/EEC of 15 July 1975 on waste Council Directive 78/319/EEC of 20 March 1978 on toxic and dangerous waste	Case C-38797 under Article 171(2) of the Treaty (now Article 228(2) EC)	Commission of the European Communities, applicant v Hellenic Republic, defendant	**On those grounds, THE COURT hereby:** **1. Declares that, by failing to take the measures necessary to ensure that waste is disposed of in the area of Chania without endangering human health and without harming the environment in accordance with Article 4 of Council Directive 75/442/EEC of 15 July 1975 on waste and by failing to draw up for that area plans for the disposal of waste, pursuant to Article 6 of Directive 75/442, and of toxic and dangerous waste, pursuant to Article 12 of Council Directive 78/319/EEC of 20 March 1978 on toxic and dangerous waste, the Hellenic Republic has not implemented all the necessary measures to comply with the judgment of the Court of 7 April 1992 in Case C-45/91 Commission v Greece and has failed to fulfil its obligations under Article 171 of the EC Treaty;** **2. Orders the Hellenic Republic to pay to the Commission of the European Communities, into the account EC own**	**Conclusion Summary** 1. Infringement proceedings brought by the Commission under Article 171(2) of the Treaty (now Article 228(2) EC) for a declaration that a Member State has failed to fulfil its obligations by not taking the necessary measures to comply with a judgment of the Court establishing a breach of obligations on its part and for an order requiring it to pay a periodic penalty payment are admissible where all the stages of the pre-litigation procedure, including the letter of formal notice, have occurred after the Treaty on European Union entered into force. (see para. 42) 2. Whilst Article 4 of Directive 75/442 on waste did not specify the actual content of the measures to be taken by the Member States in order to ensure that waste is disposed of without endangering human health and without harming the environment, it was 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. A significant deterioration in the environment over a protracted period when no action has been taken by the competent authorities is in principle an indication that the Member State concerned has exceeded the discretion conferred on it by that

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			resources, a penalty payment of EUR 20 000 for each day of delay in implementing the measures necessary to comply with the judgment in Case C-45/91, from delivery of the present judgment until the judgment in Case C-45/91 has been complied with; **3. Orders the Hellenic Republic to pay the costs;** **4. Orders the United Kingdom of Great Britain and Northern Ireland to bear its own costs.**	provision. The same analysis can be made as regards Article 5 of Directive 78/319 on toxic and dangerous waste. (see paras 55-57) 3. The obligations flowing from Article 4 of Directive 75/442 on waste and Article 5 of Directive 78/319 on toxic and dangerous waste were independent of the more specific obligations contained in Articles 5 to 11 of Directive 75/442 concerning the planning, organisation and supervision of waste disposal operations and Article 12 of Directive 78/319 concerning the disposal of toxic and dangerous waste. The same is true of the corresponding obligations under Directive 75/442 as amended and Directive 91/689 on hazardous waste. (see paras 48-49, 58) 4. A Member State may not plead internal circumstances, such as difficulties of implementation which emerge at the stage when a Community measure is put into effect, to justify a failure to comply with obligations and time-limits laid down by Community law. (see para. 70) 5. Incomplete practical measures or fragmentary legislation cannot discharge the obligation of Member States to draw up a comprehensive programme with a view to attaining certain objectives. Legislation or specific measures amounting only to a series of ad hoc normative interventions that are incapable of constituting an organised and coordinated system for the disposal of waste and toxic and dangerous waste cannot be regarded as plans which the Member States are required to adopt under Article 6 of Directive 75/442 on waste and Article 12 of Directive 78/319 on toxic and dangerous waste. (see paras 75-76) 6. While Article 171 of the Treaty (now Article 228 EC) does not specify the period within which a judgment establishing that a Member State has failed to fulfil its obligations must be complied with, the importance of immediate and uniform

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				application of Community law means that the process of compliance must be initiated at once and completed as soon as possible. (see para. 82) 7. Article 171(1) of the Treaty (now Article 228(1) EC) provides that, if the Court finds that a Member State has failed to fulfil an obligation under the Treaty, that State is required to take the necessary measures to comply with the Court's judgment. If the Member State concerned does not take those measures within the time-limit laid down by the Commission in the reasoned opinion adopted pursuant to the first subparagraph of Article 171(2) of the Treaty, the Commission may bring the case before the Court. As provided in the second subparagraph of Article 171(2), the Commission is to specify the amount of the lump sum or penalty payment to be paid by the Member State concerned which it considers appropriate in the circumstances. In the absence of provisions in the Treaty, the Commission may adopt guidelines for determining how the lump sums or penalty payments which it intends to propose to the Court are calculated, so as, in particular, to ensure equal treatment between the Member States. While these suggestions of the Commission cannot bind the Court, they are however a useful point of reference. (see paras 81, 83-84, 89) 8. It is stated in the third subparagraph of Article 171(2) of the Treaty (now the third subparagraph of Article 228(2) EC) that the Court, if it finds that the Member State concerned has not complied with its judgment, may impose a lump sum or a penalty payment on it. First, since the principal aim of penalty payments is that the Member State should remedy the breach of obligations as soon as possible, a penalty payment must be set that will be appropriate to the circumstances and proportionate both to the breach which has been found and to the ability to pay of the Member State concerned. Second, the degree of urgency that the Member State concerned should fulfil its obligations may vary in accordance with the breach. To that end, the basic

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				criteria which must be taken into account in order to ensure that penalty payments have coercive force and Community law is applied uniformly and effectively are, in principle, the duration of the infringement, its degree of seriousness and the ability of the Member State to pay. In applying those criteria, regard should be had in particular to the effects of failure to comply on private and public interests and to the urgency of getting the Member State concerned to fulfil its obligations. (see paras 89-92) **See the full text of the judgement**
Council Directive 75/442/EEC of 15 July 1975 on waste as amended by Council Directive 91/156/EEC of 18 March 1991 Council Regulation (EEC) No 259/93 of 1 February 1993 on the supervision and control of shipments of waste within, into and out of the European Community	Case C-203/96 under Article 177 of the EC Treaty	Chemische Afvalstoffen Dusseldorp BV and Others v Minister van Volkshuisvesting, Ruimtelijke Ordening en Milieubeheer	**On those grounds, THE COURT (Sixth Chamber), in answer to the questions referred to it by the Raad van State by order of 23 April 1996, hereby rules:** **1. Council Directive 75/442/EEC of 15 July 1975 on waste, as amended by Council Directive 91/156/EEC of 18 March 1991 and Council Regulation (EEC) No 259/93 of 1 February 1993 on the supervision and control of shipments of waste within, into and out of the European Community cannot be interpreted as meaning that the principles of self-sufficiency and proximity are applicable to shipments of waste for recovery. Article 130t of the EC Treaty does not permit Member States to extend the application of those principles to such waste when it is clear that they create a barrier to exports which is not justified either by an imperative measure relating to protection of the environment or by one of derogations provided for by Article 36 of that Treaty.** **2. Article 90 of the EC Treaty, in**	**Conclusion Summary** 3. Directive 75/442 on waste, as amended by Directive 91/156, and Regulation No 259/93 on the supervision and control of shipments of waste within, into and out of the European Community cannot be interpreted as meaning that the principles of self-sufficiency and proximity are applicable to shipments of waste for recovery. That follows from the provisions of the directive and the regulation and from the preparatory texts. Furthermore, the difference in treatment between waste for recovery and waste for disposal reflects the intention of the Community legislature to encourage recovery of waste in the Community as whole, in particular by eliciting the best technologies, which means that waste of that type should be able to move freely between Member States for processing, thus excluding the application of the principles of self-sufficiency and proximity. Article 130t of the Treaty, which authorises Member States to adopt protective measures which are more stringent than those adopted pursuant to Article 130s, in so far as they are compatible with the Treaty, does not permit them to extend the application of those principles to waste for recovery when it is clear that those principles create a barrier to exports which is not justified

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			conjunction with Article 86, precludes rules such as the Long-term Plan whereby a Member State requires undertakings to deliver their waste for recovery, such as oil filters, to a national undertaking on which it has conferred the exclusive right to incinerate dangerous waste unless the processing of their waste in another Member State is of a higher quality than that performed by that undertaking if, without any objective justification and without being necessary for the performance of a task in the general interest, those rules have the effect of favouring the national undertaking and increasing its dominant position.	either by an imperative measure relating to protection of the environment or by one of the derogations provided for by Article 36 of the Treaty. **See the full text of the judgement**
Council Regulation (EEC) No 259/93 of 1 February 1993 on the supervision and control of shipments of waste within, into and out of the European Community 75/442/EEC of 15 July 1975 on waste (OJ 1975 L 194, p. 39), as amended by Commission Decision 96/350/EC of 24 May 1996	Case C-458/00 under Article 226 EC Treaty	Commission of the European Communities, applicant, v Grand Duchy of Luxembourg, defendant	**On those grounds, THE COURT (Fifth Chamber)** **hereby:** **1. Dismisses the application;** **2. Orders the Commission of the European Communities to pay the costs;** **3. Orders the Republic of Austria to bear its own costs.**	**Conclusion Summary** APPLICATION for a declaration that by raising unjustified objections to certain shipments of waste to another Member State to be used principally as a fuel, in breach of Article 7(2) and (4) of Council Regulation (EEC) No 259/93 of 1 February 1993 on the supervision and control of shipments of waste within, into and out of the European Community (OJ 1993 L 30, p. 1), and of Article 1(f) in conjunction with point R1 of Annex II B to Council Directive 75/442/EEC of 15 July 1975 on waste (OJ 1975 L 194, p. 39), as amended by Commission Decision 96/350/EC of 24 May 1996 (OJ 1996 L 135, p. 32), the Grand Duchy of Luxembourg has failed to fulfil its obligations under Articles 2, 6 and 7 of that Regulation and under Article 1(f) in conjunction with point R1 of Annex II B to that Directive. 32. That provision should be interpreted as meaning that it covers the combustion of household waste if, first, the main purpose of the operation concerned is to enable the waste to be

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				used as a means of generating energy. The term `use' in point R1 of Annex II B to the Directive implies that the essential purpose of the operation referred to in that provision is to enable waste to fulfil a useful function, namely the generation of energy. 33. Second, the combustion of household waste constitutes an operation referred to in point R1 of Annex II B to the Directive where the conditions in which that operation is to take place give reason to believe that it is indeed a `means to generate energy'. This assumes both that the energy generated by, and reclaimed from, combustion of the waste is greater than the amount of energy consumed during the combustion process and that part of the surplus energy generated during combustion is effectively used, either immediately in the form of the heat produced by incineration or, after processing, in the form of electricity. 34. Third, it follows from the term `principally' used in point R1 of Annex II B to the Directive that the waste must be used principally as a fuel or other means of generating energy, which means that the greater part of the waste must be consumed during the operation and that the greater part of the energy generated must be reclaimed and used. 35.That interpretation is in accordance with the concept of recovery which comes from the Directive. 36. It follows from Article 3(1)(b) and the fourth recital of the Directive that the essential characteristic of a waste recovery operation is that its principal objective is that the waste serve a useful purpose in replacing other materials which would have had to be used for that purpose, thereby conserving natural resources (ASA, cited above, paragraph 69). 37. The combustion of waste therefore constitutes a recovery operation where its principal objective is that the waste can fulfil a useful function as a means of generating energy, replacing the use of a source of primary energy which would have had to have been used to fulfil that function. 38. In the light of those criteria, the Commission has failed to establish that the objection raised in the contested decisions does

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				not accord with the distinction between disposal operations and recovery operations laid down by the directive in Annexes II A and II B thereto. 44. The Commission has not adduced any evidence in the context of its action which shows that, contrary to what the competent Luxembourg authorities considered in the contested decisions, the principal objective of the operation in question was the recovery of waste. It has not provided any evidence at all of this, such as the fact that the waste in question was intended for a plant which, unless it was supplied with waste, would have had to operate using a primary energy source, or that the waste was to have been delivered to the processing plant in exchange for payment by the plant operator to the producer or holder of the waste. 45. The Commission only maintained in that regard that the shipments were of waste intended for use as a means of generating energy and that the purpose of the processing plant to which the waste was to be shipped did not constitute a relevant criterion for the purposes of classifying an operation for the shipment of waste. 46. Consequently, the Commission's application is unfounded and must therefore be dismissed. **See the full text of the judgement**
Council Regulation (EEC) No 259/93 of 1 February 1993 on the supervision and control of shipments of waste within, into and out of the European Community	Case C-228/00 under Article 226 EC Treaty	Commission of the European Communities, applicant, v Federal Republic of Germany, defendant	**On those grounds, THE COURT (Fifth Chamber) hereby:** **1. Declares that by raising unjustified objections to certain shipments of waste to other Member States to be used principally as a fuel, the Federal Republic of Germany has failed to fulfil its obligations under Article 7(2) and (4) of Council Regulation (EEC) No 259/93 of 1 February 1993 on the supervision and control of shipments of**	**Conclusion Summary** APPLICATION for a declaration that by raising unjustified objections against certain shipments of waste to other Member States to be used principally as a fuel the Federal Republic of Germany has failed to fulfil its obligations under Article 7(2) and (4) of Council Regulation (EEC) No 259/93 of 1 February 1993 on the supervision and control of shipments of waste within, into and out of the European Community (OJ 1993 L 30, p. 1).

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			waste within, into and out of the European Community; **2. Orders the Federal Republic of Germany to pay the costs.**	40. In that regard, it should be observed that point R1 of Annex II B to the Directive includes among waste recovery operations their `[u]se principally as a fuel or other means to generate energy'. 41. That provision should be interpreted as meaning that it covers the use of waste as a fuel in cement kilns since, first, the main purpose of the operation concerned is to enable the waste to be used as a means of generating energy. The term `use' in point R1 of Annex II B to the Directive implies that the essential purpose of the operation referred to in that provision is to enable waste to fulfil a useful function, namely the generation of energy. 42. Second, the use of waste as a fuel in cement kilns is an operation referred to in point R1 of Annex II B to the Directive where the conditions in which that operation is to take place give reason to believe that it is indeed a `means to generate energy'. This assumes both that the energy generated by, and recovered from, combustion of the waste is greater than the amount of energy consumed during the combustion process and that part of the surplus energy generated during combustion should effectively be used, either immediately in the form of the heat produced by incineration or, after processing, in the form of electricity. 43. Third, it follows from the term `principally' used in point R1 of Annex II B to the Directive that the waste must be used principally as a fuel or other means of generating energy, which means that the greater part of the waste must be consumed during the operation and the greater part of the energy generated must be recovered and used. 44. That interpretation is in accordance with the concept of recovery which comes from the Directive. 46. The combustion of waste therefore constitutes a recovery operation where its principal objective is that the waste can fulfil

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				a useful function as a means of generating energy, replacing the use of a source of primary energy which would have had to have been used to fulfil that function. 47. Since the use of waste as a fuel meets the conditions referred to in paragraphs 41 to 43 above, it constitutes a recovery operation as referred to in point R1 of Annex II B to the Directive, without the need to take into consideration criteria such as the calorific value of the waste, the amount of harmful substances contained in the incinerated waste or whether or not the waste has been mixed. 53. Although the waste concerned was intended for use as a fuel in Belgium, where they were to replace sources of primary energy in heating cement kilns, the competent German authorities refused to consider that the shipments in question constituted a recovery operation as referred to in point R1 of Annex II B to the Directive, solely on the ground that the operations concerned did not meet certain general criteria laid down in the circulars it had adopted, such as the minimum calorific value of the waste. 54. As is made clear in paragraph 47 above, those criteria are not relevant for the purposes of determining whether the use of waste as a fuel in a cement kiln constitutes a disposal operation or a recovery operation within the meaning of the Directive and the Regulation. 55. In those circumstances, it must be declared that, by raising unjustified objections to certain shipments of waste to other Member States to be used principally as a fuel, the Federal Republic of Germany has failed to fulfil its obligations under Article 7(2) and (4) of the Regulation. **See the full text of the judgement**

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NATURE				
Council Directive 79/409/EEC of 2 April 1979 on the conservation of wild birds	Case 247/85 under Article 169 of the EEC Treaty	Commission of the European Communities, applicant, v Kingdom of Belgium, defendant	**ON THOSE GROUNDS, The Court hereby:** **(1) Declares that, by not adopting within the prescribed period all the laws, regulations and administrative provisions needed to comply with Council Directive 79/409/EEC OF 2 April 1979 on the conservation of wild birds, the kingdom of Belgium has failed to fulfil its obligations under the EEC Treaty;** **(2) Orders the Kingdom of Belgium to pay the costs.**	**Conclusion Summary** The transposition of a directive into national law does not necessarily require the provisions of the directive to be enacted in precisely the same words in a specific, express legal provision of national law; a general legal context may be sufficient if it actually ensures the full application of the directive in a sufficiently clear and precise manner . However, a faithful transposition becomes particularly important in a case such as the transposition of directive 79/409 concerning the conservation of wild birds in which the management of the common heritage is entrusted to the member states in their respective territories. **See the full text of the judgement**
Council Directive 79/409/EEC of 2 April 1979 on the conservation of wild birds	Case C-57/89 under Article 169 of the EEC Treaty	Commission of the European Communities, applicant, v Federal Republic of Germany, defendant, supported by United Kingdom of Great Britain and Northern	**On those grounds, THE COURT hereby:** **(1) Dismisses the application;** **(2) Orders the Commission to pay the costs, including the costs of the intervener and those relating to the application for interim measures.**	**Conclusion Summary** Although the Member States do have a certain discretion with regard to the choice of the territories which are most suitable for classification as special protection areas pursuant to Article 4(4) of Directive 79/409 on the conservation of wild birds, they do not have the same discretion to modify or reduce the extent of such areas, which contain the most suitable environments for the species listed in Annex I, and thus unilaterally escape from the obligations imposed on them by Article 4(4) of the directive. The power of the member States to reduce the extent of special protection areas can be justified only on exceptional grounds corresponding to a general interest which is superior to the general interest represented by the ecological objective of the directive. In that context the economic and recreational

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		Ireland, intervener		requirements referred to in Article 2 of the directive do not enter into consideration, since that provision does not constitute an autonomous derogation from the system of protection established by the directive. **See the full text of the judgement**
Council Directive 79/409/EEC of 2 April 1979 on the conservation of wild birds (	Case C-355/90 under Article 169 of the EEC Treaty	Commission of the European Communities, applicant, v Kingdom of Spain, defendant	**On those grounds, THE COURT hereby:** **1. Declares that, by not classifying the Santoña marshes as a special protection area and by not taking appropriate steps to avoid pollution or deterioration of habitats in that area, contrary to the provisions of Article 4 of Council Directive 79/409/EEC of 2 April 1979 on the conservation of wild birds, the Kingdom of Spain has failed to fulfil its obligations under the EEC Treaty;** **2. Orders the Kingdom of Spain to pay the costs.**	**Conclusion Summary** 1. Articles 3 and 4 of Directive 79/409 on the conservation of wild birds require Member States to preserve, maintain and re-establish the habitats of the said birds as such, because of their ecological value. The obligations on Member States under those articles exist even before any reduction is observed in the number of birds or any risk of a protected species becoming extinct has materialized. 2. In implementing Directive 79/409 on the conservation of wild birds, Member States are not authorized to invoke, at their option, grounds of derogation based on taking other interests into account. With respect, more specifically, to the obligation to take special conservation measures for certain species under Article 4 of the directive, such grounds must, in order to be acceptable, correspond to a general interest which is superior to the general interest represented by the ecological objective of the directive. In particular, the interests referred to in Article 2 of the directive, namely economic and recreational requirements, do not enter into consideration, as that provision does not constitute an autonomous derogation from the general system of protection established by the directive. 3. In choosing the territories which are most suitable for classification as special protection areas pursuant to Article 4(1) of Directive 79/409 on the conservation of wild birds, Member States have a certain discretion which is limited by the fact that the classification of those areas is subject to certain ornithological criteria determined by the directive, such as the

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				presence of birds listed in Annex I to the directive, on the one hand, and the designation of a habitat as a wetland area, on the other. However, Member States do not have the same discretion under Article 4(4) of the directive to modify or reduce the extent of such areas. **See the full text of the judgement**
Council Directive 79/409/EEC of 2 April 1979 on the conservation of wild birds	Case C-435/92 under Article 177 of the EEC Treaty	Association pour la Protection des Animaux Savages and Others v Préfet de Maine-et-Loire, Préfet de la Loire-Atlantique	**On those grounds, THE COURT, in answer to the questions referred to it by the Administrative Court of Nantes by judgments of 17 December 1992, hereby rules: 1. Pursuant to Article 7(4) of Council Directive 79/409/EEC of 2 April 1979 on the conservation of wild birds, the closing date for the hunting of migratory birds and waterfowl must be fixed in accordance with a method which guarantees complete protection of those species during the period of pre-mating migration. Methods whose object or effect is to allow a certain percentage of the birds of a species to escape such protection do not comply with that provision; 2. It is incompatible with the third sentence of Article 7(4) of the directive for a Member State to fix closing dates for the hunting season which vary according to the species of bird, unless the Member State concerned can adduce evidence, based on scientific and technical data relevant to each individual case, that staggering the closing dates for hunting**	**Conclusion Summary** Pursuant to Article 7(4) of Council Directive 79/409/EEC of 2 April 1979 on the conservation of wild birds, the closing date for the hunting of migratory birds and waterfowl must be fixed in accordance with a method which guarantees complete protection of those species during the period of pre-mating migration. Methods whose object or effect is to allow a certain percentage of the birds of a species to escape such protection, such as those consisting in fixing the closing date for hunting by reference to the period during which migratory activity reaches its highest level, or those taking into account the moment at which a certain percentage of birds have started to migrate, or those consisting in ascertaining the average date of the commencement of pre-mating migration, accordingly do not comply with that provision. It is incompatible with the third sentence of Article 7(4) of the directive, concerning migratory species in particular, for a Member State to fix closing dates for the hunting season which vary according to the species of bird, unless the Member State concerned can adduce evidence, based on scientific and technical data relevant to each individual case, that staggering the closing dates for hunting does not impede the complete protection of the species of bird liable to be affected by such staggering. The fixing of closing dates which vary between the different parts of the territory of a Member State is compatible with the Directive

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			does not impede the complete protection of the species of bird liable to be affected by such staggering; **3. On condition that complete protection of the species is guaranteed, the fixing of closing dates which vary between the different parts of the territory of a Member State is compatible with the directive. If the power to fix the closing date for the hunting of migratory birds is delegated to subordinate authorities, the provisions which confer that power must ensure that the closing date can be fixed only in such a way as to make possible complete protection of the birds during pre-mating migration.**	on condition that complete protection of the species is guaranteed. If the power to fix the closing date for the hunting of migratory birds is delegated to subordinate authorities, the provisions which confer that power must ensure that the closing date can be fixed only in such a way as to make possible complete protection of the species during pre-mating migration. **See the full text of the judgement**
Council Directive 79/409/EEC of 2 April 1979 on the conservation of wild birds	Case C-118/94 under Article 177 of the EEC Treaty	Associazione Italiana per il World Wildlife Fund, Ente Nazionale per la Protezione Animali, Lega per l' Ambiente ° Comitato Regionale, Lega Anti Vivisezione ° Delegazione Regionale, Lega per l' Abolizione	**On those grounds, THE COURT (Fifth Chamber), in answer to the question referred to it by the Tribunale Amministrativo Regionale per il Veneto, by order of 27 May 1993, hereby rules: Article 9 of Council Directive 79/409/EEC of 2 April 1979 on the conservation of wild birds is to be interpreted as meaning that it authorizes the Member States to derogate from the general prohibition on hunting protected species laid down by Articles 5 and 7 of the directive only by measures which refer in sufficient detail to the factors mentioned in Article 9(1) and (2).**	**Conclusion Summary** 1. Pursuant to the division of judicial functions between national courts and the Court of Justice provided for by Article 177 of the Treaty, the Court gives preliminary rulings where the questions referred concern the interpretation of a provision of Community law without, in principle, having to look into the circumstances in which the national courts were prompted to submit questions and envisage applying the provision of Community law which they have asked the Court to interpret. The matter would be different only if it were apparent either that the procedure provided for in Article 177 had been misused and was in fact being used to have the Court give a ruling when there was no genuine dispute or that the provision of Community law referred to the Court for interpretation was manifestly incapable of applying. 2. Article 9(1) of Directive 79/409 on the conservation of wild birds, which provides for the possibility for the Member States to

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		della Caccia, Federnatura Veneto, Italia Nostra ° Sezione di Venezia v Regione Veneto		derogate from the general prohibition on hunting protected species laid down in Articles 5 and 7 of the directive where there is no other satisfactory solution and for one of the reasons listed exhaustively therein, and Article 9(2), which defines the precise formal conditions for such derogations, must be interpreted as authorizing the Member States to grant those derogations only by measures which refer in sufficient detail to the factors mentioned in Article 9(1) and (2). In a sphere in which the management of the common heritage is entrusted to the Member States in their respective territories, faithful transposition of directives becomes particularly important. **See the full text of the judgement**
Council Directive 79/409/EEC of 2 April 1979 on the conservation of wild birds	Case C-149/94 under Article 177 of the EC Treaty	The Tribunal de Grande Instance, Caen (France) for a preliminary ruling in the criminal proceedings pending before that court against Didier Vergy	**On those grounds, THE COURT (Third Chamber) in answer to the questions referred to it by the Tribunal de Grande Instance, Caen, by decision of 22 March 1994, hereby rules:** **1. Council Directive 79/409/EEC of 2 April 1979 on the conservation of wild birds requires the Member States to prohibit trade in specimens belonging to a species of bird which is not listed in the annexes thereto ° in so far as the species concerned is a species of naturally occurring birds in the wild state in the European territory of the Member States to which the Treaty applies ° subject to the option to derogate provided for by Article 9.** **2. Directive 79/409/EEC is not applicable to specimens of birds born and reared in captivity.** **3. Directive 79/409/EEC requires each**	**Conclusion Summary** Directive 79/409 on the conservation of wild birds requires the Member States to prohibit trade in specimens belonging to a species of bird which is not listed in the annexes thereto ° in so far as the species concerned is a species of naturally occurring birds in the wild state in the European territory of the Member States to which the Treaty applies ° subject to the option to derogate provided for by Article 9. The duty to provide such protection is unaffected by the fact that the natural habitat of the species in question may not occur in the territory of the Member State concerned. The importance of complete and effective protection of wild birds throughout the Community, irrespective of the areas they stay in or pass through, causes any national legislation which delimits the protection of wild birds by reference to the concept of national heritage to be incompatible with the Directive. However, Directive 79/409 is not applicable to specimens of birds born and reared in captivity. To extend the protective regime beyond bird populations present in their natural

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			Member State to ensure the protection of a species of bird naturally occurring in the wild state in the European territory of the Member States to which the Treaty applies, even if the natural habitat of the species in question does not occur in the territory of the Member State concerned.	environment would not serve the environmental objective underlying the Directive. Furthermore, since the Community legislature has taken no action with regard to trade in specimens of birds born and raised in captivity, the Member States remain competent to regulate that trade, subject to Article 30 et seq. of the Treaty concerning products imported from other Member States. **See the full text of the judgement**
Council Directive 79/409/EEC of 2 April 1979 on the conservation of wild birds	Case C-44/95 under Article 177 of the EC Treaty	Regina v Secretary of State for the Environment ex parte Royal Society for the Protection of Birds, Intervener: The Port of Sheerness Limited	**On those grounds, THE COURT in answer to the questions submitted to it by the House of Lords, by order of 9 February 1995, hereby rules: 1. Article 4(1) or (2) of Council Directive 79/409/EEC of 2 April 1979 on the conservation of wild birds is to be interpreted as meaning that a Member State is not authorized to take account of the economic requirements mentioned in Article 2 thereof when designating a Special Protection Area and defining its boundaries. 2. Article 4(1) or (2) of Directive 79/409 is to be interpreted as meaning that a Member State may not, when designating a Special Protection Area and defining its boundaries, take account of economic requirements as constituting a general interest superior to that represented by the ecological objective of that directive. 3. Article 4(1) or (2) of Directive 79/409 is to be interpreted as meaning that a Member State may not, when designating**	**Conclusion Summary** Article 4(1) or Article 4(2) of Directive 79/409 on the conservation of wild birds, which requires the Member States to take special conservation measures for certain species, and in particular to designate as Special Protection Areas the most suitable territories for their conservation, must be interpreted as meaning that a Member State is not authorized to take account of the economic requirements mentioned in Article 2 of the directive when choosing and defining the boundaries of a Special Protection Area or even to take account of economic requirements constituting a general interest superior to that represented by the ecological objective of that directive. Similarly, a Member State may not take account of economic requirements in so far as they amount to imperative reasons of overriding public interest of the kind referred to in Article 6(4) of Directive 92/43 on the conservation of the natural habitats of wild fauna and flora, as inserted in Directive 79/409. Although the latter provision widened the range of grounds on which it may be justified to encroach upon Special Protection Areas already designated as such, by expressly including therein reasons of a social or economic nature, it nevertheless did not make any change regarding the initial stage of classification referred to in Article 4(1) and (2) of Directive 79/409, and

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			a Special Protection Area and defining its boundaries, take account of economic requirements which may constitute imperative reasons of overriding public interest of the kind referred to in Article 6(4) of Directive 92/43/EEC of 21 May 1992 on the conservation of the natural habitats of wild fauna and flora.	therefore the classification of sites as Special Protection Areas must in all circumstances be carried out in accordance with the criteria accepted by those provisions. **See the full text of the judgement**
Council Directive 79/409/EEC of 2 April 1979 on the conservation of wild birds	Case C-3/96 under Article 169 of the EC Treaty	Commission of the European Communities, applicant, v Kingdom of the Netherlands, defendant, supported by Federal Republic of Germany, intervener	**On those grounds, THE COURT, hereby:** **1. Declares that, by classifying as special protection areas territories whose number and total area are clearly smaller than the number and total area of the territories suitable for classification as special protection areas within the meaning of Article 4(1) of Council Directive 79/409/EEC of 2 April 1979 on the conservation of wild birds, the Kingdom of the Netherlands has failed to fulfil its obligations under that directive;** **2. Orders the Kingdom of the Netherlands to pay the costs;** **3. Orders the Federal Republic of Germany to bear its own costs.**	**Conclusion Summary** 1. The aim of the pre-litigation procedure provided for in Article 169 of the Treaty is to give the Member State concerned an opportunity to justify its position or, as the case may be, to comply of its own accord with the requirements of the Treaty. If that attempt to reach a settlement proves unsuccessful, the Member State is requested to comply with its obligations as set out in the reasoned opinion which concludes the pre-litigation procedure, within the period prescribed in that opinion. The proper conduct of that procedure constitutes an essential guarantee intended by the Treaty not only to protect the rights of the Member State concerned but also to ensure that any contentious procedure will have a clearly defined dispute as its subject-matter, the subject-matter being determined by the Commission's reasoned opinion. Where it is not disputed that the reasoned opinion and the procedure leading up to it were properly conducted, a Member State's right to a fair hearing is not infringed by the circumstance that the contentious procedure is opened by an application which takes no account of any new matters of fact or law put forward by the Member State concerned in its reply to the reasoned opinion. It is fully open to that State to raise those matters in the contentious procedure, to begin with in its first pleading in defence. 2. Article 4(1) of Directive 74/409 on the conservation of wild

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				birds requires Member States, if species mentioned in Annex I occur on their territory, to classify as special protection areas the most suitable territories in number and size for their conservation, an obligation which it is not possible to avoid by adopting other special conservation measures. Nor may the economic requirements mentioned in Article 2 of the directive be taken into account in this respect. As regards the Member States' margin of discretion in choosing the most suitable territories, that does not concern the appropriateness of classifying as special protection areas the territories which appear the most suitable according to ornithological criteria, but only the application of those criteria for identifying the most suitable territories for conservation of the species in question. Consequently, where it appears that a Member State has classified as special protection areas sites the number and total area of which are manifestly less than the number and total area of the sites considered to be the most suitable, it will be possible to find that that Member State has failed to fulfil its obligation under Article 4(1) of the directive; for assessing the extent to which the Member State has complied with that obligation, the Court may use as a basis of reference the Inventory of Important Bird Areas in the European Community, 1989, which draws up an inventory of areas of great importance for the conservation of wild birds in the Community. **See the full text of the judgement**
Council Directive 79/409/EEC of 2 April 1979 on the conservation of wild birds and Council Directive	Case C-374/98 under Article 169 of the EC Treaty	Commission of the European Communities v French Republic	On those grounds, THE COURT (Sixth Chamber) hereby: 1. Declares that, by not classifying any part of the Basses Corbières site as a special protection area and by not adopting special conservation measures for that site sufficient	**Summary** 1. The inventory of areas which are of great importance for the conservation of wild birds, more commonly known under the acronym IBA (Inventory of Important Bird Areas in the European Community), although not legally binding on the Member States concerned, contains scientific evidence making it possible to assess whether a Member State has complied with its

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92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora			in their geographical extent, the French Republic has failed to fulfil its obligations under Article 4(1) of Council Directive 79/409/EEC of 2 April 1979 on the conservation of wild birds; 2. Dismisses the remainder of the application; 3. Orders the parties to bear their own costs.	obligation to classify as special protection areas the most suitable territories in number and size for conservation of the protected species. It follows from the general scheme of Article 4 of Directive 79/409 on the conservation of wild birds that, where a given area fulfils the criteria for classification as a special protection area, it must be made the subject of special conservation measures capable of ensuring, in particular, the survival and reproduction of the bird species mentioned in Annex I to that directive. (see paras 25-26) 2. The text of Article 7 of Directive 92/43 on the conservation of natural habitats and of wild fauna and flora expressly states that Article 6(2) to (4) of that directive apply, in substitution for the first sentence of Article 4(4) of Directive 79/409 on the conservation of wild birds, to the areas classified under Article 4(1) or (2) of the latter directive. It follows that, on a literal interpretation of that passage of Article 7 of Directive 92/43, only areas classified as special protection areas fall under the influence of Article 6(2) to (4) of that directive. The fact that the protection regime under the first sentence of Article 4(4) of Directive 79/409 applies to areas that have not been classified as special protection areas but should have been so classified does not in itself imply that the protection regime referred to in Article 6(2) to (4) of Directive 92/43 replaces the first regime referred to in relation to those areas. (see paras 44-45, 49) See the full text of the judgement http://europa.eu.int/smartapi/cgi/sga_doc?smartapi!celexapi!prod!CELEXnumdoc&lg=EN&numdoc=61998J0374&model=guichett
Council Directive 92/43/EEC of 21 May	Case C-371/98 under Article	The Queen and	**On those grounds, THE COURT in answer to the question referred to it by**	**Conclusion Summary**

DIRECTIVE	CASE NUMBER	PARTIES	J U D G E M E N T Conclusion	Operational part of the judgement
1992 on the conservation of natural habitats and of wild fauna and flora	177 of the EC Treaty (now Article 234 EC)	Secretary of State for the Environment, Transport and the Regions, ex parte First Corporate Shipping Ltd, interveners: World Wide Fund for Nature UK (WWF) and Avon Wildlife Trust	**the the Queen's Bench Division (Divisional Court) of the High Court of Justice of England and Wales by order of 21 July 1998, hereby rules:** **On a proper construction of Article 4(1) of Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora, a Member State may not take account of economic, social and cultural requirements or regional and local characteristics, as mentioned in Article 2(3) of that directive, when selecting and defining the boundaries of the sites to be proposed to the Commission as eligible for identification as sites of Community importance.**	Article 4(1) of Directive 92/43 on the conservation of natural habitats and of wild fauna and flora must be interpreted as meaning that a Member State may not take account of economic, social and cultural requirements or regional and local characteristics, as mentioned in Article 2(3) of that directive, when selecting and defining the boundaries of the sites to be proposed to the Commission as eligible for identification as sites of Community importance. To produce a draft list of sites of Community importance, capable of leading to the creation of a coherent European ecological network of special areas of conservation, the Commission must have available an exhaustive list of the sites which, at national level, have an ecological interest which is relevant from the point of view of the directive's objective of conservation of natural habitats and wild fauna and flora. Only in that way is it possible to realise the objective, in the first subparagraph of Article 3(1) of Directive 92/43, of maintaining or restoring the natural habitat types and the species' habitats concerned at a favourable conservation status in their natural range, which may lie across one or more frontiers inside the Community. Having regard to the fact that, when a Member State draws up the national list of sites, it is not in a position to have precise detailed knowledge of the situation of habitats in the other Member States, it cannot of its own accord, whether because of economic, social or cultural requirements or because of regional or local characteristics, delete sites which at national level have an ecological interest relevant from the point of view of the objective of conservation without jeopardising the realisation of that objective at Community level. (see paras 22-23, 25 and operative part) **See the full text of the judgement**
Council Directive 79/409/EEC of 2 April	Case C-38/99 under Article	Commission of the	**On those grounds, THE COURT (Sixth Chamber) hereby:**	**Conclusion Summary**

DIRECTIVE	CASE NUMBER	PARTIES	J U D G E M E N T Conclusion	Operational part of the judgement
1979 on the conservation of wild birds	169 of the EC Treaty (now Article 226 EC)	European Communities, applicant, v French Republic, represented, defendant	**1. Declares that, by failing correctly to transpose Article 7(4) of Council Directive 79/409/EEC of 2 April 1979 on the conservation of wild birds, by omitting to communicate all the transposition measures relating to the whole of its territory and by failing correctly to implement the aforesaid provision, the French Republic has failed to fulfil its obligations under that directive;** **2. Orders the French Republic to pay the costs.**	1. Article 7(4) of Directive 79/409 on the conservation of wild birds seeks in particular to impose a prohibition of hunting of all species of wild birds during the rearing periods and the various stages of reproduction and dependency and, in the case of migratory species, during their return to their rearing grounds. Moreover that article is designed to secure a complete system of protection in the periods during which the survival of wild birds is particularly under threat. Accordingly, protection against hunting activities cannot be confined to the majority of the birds of a given species, as determined by average reproductive cycles and migratory movements. (see para. 23) 2. The national authorities are not empowered by Directive 79/409 on the conservation of wild birds to lay down closing dates for hunting which vary according to species of migratory birds or waterfowl unless the Member State concerned can adduce evidence, based on scientific and technical data relevant to each individual case, that staggering the closing dates for hunting does not impede the complete protection of species of bird liable to be affected by such staggering. (see para. 43) 3. The transposition of a directive into domestic law does not necessarily require the provisions of the directive to be enacted in precisely the same words in a specific, express provision of national law and a general legal context may be sufficient if it actually ensures the full application of the directive in a sufficiently clear and precise manner. However, faithful transposition becomes particularly important in the case of Directive 79/409 on the conservation of wild birds where management of the common heritage is entrusted to the Member States in their respective territories. (see para. 53) **See the full text of the judgement**

DIRECTIVE	CASE NUMBER	PARTIES	J U D G E M E N T Conclusion	Operational part of the judgement
Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora	Case C-103/00 under Article 226 EC Treaty	Commission of the European Communities v Hellenic Republic	**On those grounds, THE COURT (Sixth Chamber) hereby:** **1. Declares that by failing to take, within the prescribed time-limit, the requisite measures to establish and implement an effective system of strict protection for the sea turtle Caretta caretta on Zakinthos so as to avoid any disturbance of the species during its breeding period and any activity which might bring about deterioration or destruction of its breeding sites, the Hellenic Republic has failed to fulfil its obligations under Article 12(1)(b) and (d) of Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora;** **2. Orders the Hellenic Republic to pay the costs.**	**Conclusion Summary** APPLICATION for a declaration that, by failing to adopt or, in the alternative, to notify to the Commission, within the prescribed time-limit, the requisite measures to establish and implement an effective system of strict protection for the sea turtle Caretta caretta on Zakinthos (Greece) so as to avoid any disturbance of the species during its breeding period and any activity which might bring about deterioration or destruction of its breeding sites, the Hellenic Republic has failed to fulfil its obligations under the EC Treaty and under Article 12(1)(b) and (d) of 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). The Commission emphasises the fact that the bay of Laganas on Zakinthos is a vital breeding region, perhaps even the most important in the Mediterranean, for the sea turtle Caretta caretta. Given the significance of the bay of Laganas, the Greek authorities have proposed that the region be classified as one of the sites of Community importance for the Natura 2000 network. It should be observed in this regard that the Court has consistently held that the question whether there has been a failure to fulfil obligations must be examined on the basis of the position in which the Member State found itself at the end of the period laid down in the reasoned opinion and the Court cannot take account of any subsequent changes (see, inter alia, Case C-166/97 Commission v France [1999] ECR I-1719, paragraph 18, and Case C-220/99 Commission v France [2001] ECR I-5831, paragraph 33). It must, therefore, be held that the Hellenic Republic did not take, within the prescribed time-limit, all the requisite specific measures to prevent the deliberate disturbance of the sea turtle Caretta caretta during its breeding period and the deterioration or destruction of its breeding sites. Consequently, the Commission's

DIRECTIVE	CASE NUMBER	PARTIES	J U D G E M E N T Conclusion	Operational part of the judgement
				application must also be granted on this point. 40 In the light of the foregoing, the Court finds that by failing to take, within the prescribed time-limit, the requisite measures to establish and implement an effective system of strict protection for the sea turtle Caretta caretta on Zakinthos so as to avoid any disturbance of the species during its breeding period and any activity which might bring about deterioration or destruction of its breeding sites, the Hellenic Republic has failed to fulfil its obligations under Article 12(1)(b) and (d) of the Directive. **See the full text of the judgement**
Council Directive 79/409/EEC of 2 April 1979 on the conservation of wild birds	Case C-117/00 under Article 226 EC Treaty	Commission of the European Communities, v Ireland, defendant	**On those grounds, THE COURT (Sixth Chamber) hereby:** **1. Declares that, by failing to take the measures necessary to safeguard a sufficient diversity and area of habitats for the Red Grouse and by failing to take appropriate steps to avoid, in the Owenduff-Nephin Beg Complex special protection area, the deterioration of the habitats of the species for which the special protection area was designated, Ireland has failed to fulfil its obligations under Article 3 of Council Directive 79/409/EEC of 2 April 1979 on the conservation of wild birds and Article 6(2) of Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora;** **2. Orders Ireland to pay the costs.**	**Conclusion Summary** APPLICATION for a declaration that, by failing to take all the measures necessary to comply with Article 3 of Council Directive 79/409/EEC of 2 April 1979 on the conservation of wild birds (OJ 1979 L 103, p. 1), in respect of the Red Grouse, and with the first sentence of Article 4(4) of that directive and Article 6(2) of 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), in respect of the Owenduff-Nephin Beg Complex special protection area, Ireland has failed to comply with those directives and has failed to fulfil its obligations under the EC Treaty. It must, therefore, be held that, by failing to take the measures necessary to safeguard a sufficient diversity and area of habitats for the Red Grouse and by failing to take appropriate steps to avoid, in the Owenduff-Nephin Beg Complex SPA, the deterioration of the habitats of the species for which the SPA was designated, Ireland has failed to fulfil its obligations under Article 3 of the Birds Directive and Article 6(2) of the Habitats Directive. **See the full text of the judgement**

DIRECTIVE	CASE NUMBER	PARTIES	J U D G E M E N T Conclusion	Operational part of the judgement
Council Directive 79/409/EEC of 2 April 1979 on the conservation of wild birds	Case C-182/02 under Article 234 EC Treaty	Ligue pour la protection des oiseaux and Others v Premier ministre, Ministre de l'Aménagement du territoire et de l'Environnement, interveners: Union nationale des fédérations départementales de chasseurs, Association nationale des chasseurs de gibier d'eau	**On those grounds, THE COURT (Sixth Chamber), in answer to the questions referred to it by the Conseil d'État by decision of 25 January 2002, hereby rules:** **1. Article 9(1)(c) of Council Directive 79/409/EEC of 2 April 1979 on the conservation of wild birds permits a Member State to derogate from the opening and closing dates for hunting which follow from consideration of the objectives set out in Article 7(4) of that directive.** **2. Article 9 of Directive 79/409 must be interpreted as allowing hunting to be authorised pursuant to Article 9(1)(c) where:** **- there is no other satisfactory solution. That condition would not be met, inter alia, if the sole purpose of the derogation authorising hunting were to extend the hunting periods for certain species of birds in territories which they already frequent during the hunting periods fixed in accordance with Article 7 of Directive 79/409;** **- it is carried out under strictly supervised conditions and on a selective basis;** **- it applies only to certain birds in small numbers; - mention is made of:** **(a) the species which are subject to the derogations;** **(b) the means, arrangements or methods authorised for capture or killing;** **(c) the conditions of risk and the**	**Conclusion Summary** By decision of 25 January 2002, received at the Court on 15 May 2002, the Conseil d'État (Council of State) referred to the Court for a preliminary ruling under Article 234 EC two questions on the interpretation of Article 9(1)(c) of Council Directive 79/409/EEC of 2 April 1979 on the conservation of wild birds (OJ 1979 L 103, p. 1, hereinafter `the Directive'). It is clear from the foregoing that the hunting of wild birds for recreational purposes during the periods mentioned in Article 7(4) of the Directive may constitute a judicious use authorised by Article 9(1)(c) of that directive, as do the capture and sale of wild birds even outside the hunting season with a view to keeping them for use as live decoys or to using them for recreational purposes in fairs and markets (see Case 262/85 Commission v Italy [1987] ECR 3073, paragraph 38). The answer to the first question must therefore be that Article 9(1)(c) of the Directive permits a Member State to derogate from the opening and closing dates for hunting which follow from consideration of the objectives set out in Article 7(4) of the Directive. In the light of the foregoing, the answer to the second question must be that Article 9 of the Directive must be interpreted as allowing hunting to be authorised pursuant to Article 9(1)(c) where: - there is no other satisfactory solution. That condition would not be met, inter alia, if the sole purpose of the derogation authorising hunting were to extend the hunting periods for certain species of birds in territories which they already frequent during the hunting periods fixed in accordance with Article 7 of the Directive; - it is carried out under strictly supervised conditions and on a selective basis;

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			circumstances of time and place under which such derogations may be granted; **(d) the authority empowered to declare that the required conditions obtain and to decide what means, arrangements or methods may be used, within what limits and by whom;** **(e) the controls which will be carried out.**	- it applies only to certain birds in small numbers; - mention is made of: (a) the species which are subject to the derogations; (b) the means, arrangements or methods authorised for capture or killing; (c) the conditions of risk and the circumstances of time and place under which such derogations may be granted; (d) the authority empowered to declare that the required conditions obtain and to decide what means, arrangements or methods may be used, within what limits and by whom; (e) the controls which will be carried out. **See the full text of the judgement**