



Comhadal, Pabal agus Rialtas Áitiúil
Environment, Community and Local Government

Judgement of the Court of Justice of the European Communities in

Case C 494/01-Commission v Ireland dated 26 April
2005

**Programme of measures which Ireland agrees to
deliver to ensure full compliance with the
judgement.**

Approved on behalf of Ireland by the Minister for the Environment,
Community and Local Government

Updated 30 November 2014

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SUMMARY

Background - The goals and objectives of the waste directive

The core obligation for Member States under the waste directive² is to ensure that waste is recovered or disposed of without endangering human health and without using processes and methods which could harm the environment (Article 4, first paragraph).

To this end it requires them to impose certain obligations on all those dealing with waste at various stages. Thus, in what the European Commission describes as 'a seamless chain of responsibility', the Directive imposes obligations on holders of waste, collectors and transporters of waste and undertakings, which carry out waste disposal or recovery operations:

- Holders of waste must ensure, where they do not recover or dispose of it themselves, that it is handled by a public or private waste collector or by a disposal or recovery enterprise (Article 8).
- Dumping and uncontrolled disposal of waste are to be prohibited (Article 4, second paragraph).
- Undertakings, which collect or transport waste on a professional basis must at least be registered with the competent national authorities (Article 12), whereas,
- Undertakings carrying out disposal or recovery operations must obtain a permit from these authorities (Articles 9 and 10).
- These undertakings are to be inspected periodically by the competent authorities (Article 13) and, in order to facilitate these inspections they must keep records of their activities in respect of waste (Article 14).
- With a view to achieving self-sufficiency in waste disposal both at Community and national level, the directive instructs the Member States to take appropriate measures to establish an integrated and adequate network of disposal installations (Article 5).

The date for fully implementing the original waste directive, Directive 75/442, expired in July 1977, whereas the amendment of the directive by Directive 91/156 should have been implemented by 1 April 1993.

The case itself - what it is all about

In a landmark judgement against Ireland on the 20 April 2005 the European Court of Justice ruled that Ireland had infringed the Waste Framework Directive by generally and persistently failing to fulfil its obligation to fulfil various articles under that Directive,

The European Court of Justice in its judgement in Case C494/01 on 26 April 2005 Declared, inter alia, that,

"by failing to take all the measures necessary to ensure a correct implementation of the provisions of Articles 4, 5, 8, 9, 10, 12, 13 and 14 of Council Directive 75/442/EEC of 15

² Council Directive 75/442/EEC of 15 July 1975 on waste (available in the Official Journal of the EU- reference OJ 1975 L 194, p. 39), as amended by Council Directive 91/156/EEC of 18 March 1991-now replaced by Directive 2008/98/EC of the European Parliament and of Council of 19 November 2008 on waste O.J No L312,22.11.2008 p3

July 1975 on waste, as amended by Council Directive 91/156/EEC of 18 March 1991, Ireland has failed to comply with its obligations under those provisions;"

– and that a tolerant approach existed which was indicative of a large-scale administrative problem. The case was noteworthy as it not only dealt with shortcomings in the specific situations covered by the 12 complaints covered in the case but also, and more fundamentally, on account of the general and persistent nature of the deficiencies which characterised the actual application of the Directive in Ireland.

See **Appendix 1** for the relevant articles of the directive and web link <http://eur-lex.europa.eu/en/index.htm> for a copy of the judgement. Please refer to **Appendix 3** for a copy of the press release issued by the Court of Justice on the judgement.

The additional letter of formal notice (reference_1999/5112, C (2010)6536 issued by the European Commission on 30 September 2010 (at pages 1 and 2) details the full list of correspondence on the case. While acknowledging that significant progress has been made in satisfying the judgment, the Commission considers that the measures taken to date by Ireland remain incomplete or are otherwise deficient for reasons set out in the additional letter of formal notice – see **Appendix 2**.

Following a number of bilateral meetings with the European Commission Ireland has agreed to draft a Road map of outstanding deliverables and has, by the agreement of the Minister for the Environment, Community and Local Government, committed the State to delivering on the remaining issues with a firm time line for each item and this document sets out those deliverables.

The Government at its meeting on 24 April 2012, approved the proposed programme of measures to bring the case to closure, as set out in this document, and agreed to the provision of funds from voted expenditure, as it becomes necessary, to support the work of local authorities and the Environmental Protection Agency in bringing this case and associated matters to conclusion.

Copies of all correspondence on the case (as detailed in the Reasoned Opinion) and any general queries on the case may be directed to or obtained from [REDACTED] the [REDACTED] for Ireland at the following address :

Waste Policy,
Department of the Environment, Community and Local Government,
Newtown Road,
Wexford.

Tel 00353539117343
Mail: wppr@environ.ie

What has been done to date by Ireland to satisfy the judgement

The response of the Irish authorities to the case has two basic elements; a general response – detailing the Irish response in terms of a variety of headings and which addressed the **structural or administrative deficiencies** highlighted by the ECJ and secondly, the response to the site specific cases themselves. In addition certain other complaints or issues which had been taken or raised by the European Commission against or with Ireland such as unregulated end of life vehicles and other illegal sites or orphan sites such as Irish Ispat were subsumed under the case and are therefore part of an enlarged response which is required by Ireland to bring finality to the case.

In summary, Ireland's general response comes under the following headings:

SECTION A

GENERAL POLICY RESPONSE TO THE STRUCTURAL AND ADMINISTRATIVE DEFICIENCIES – THE POLICIES PUT IN PLACE TO DEAL WITH THESE³

A1 - The licensing situation has been fully addressed

Since the judgement, the licensing/permitting regime in relation to waste facilities has been fully rolled out, with the EPA resourced and any backlog of waste licences dealt with. Since 29 November 2002, all of the municipal waste landfills the subject of the individual cases have been licensed.

The National Waste Report 2012 noted that there were 13 active operational landfills accepting municipal waste for disposal, all of which are fully licensed by the EPA.

The waste collection permit system for those involved in waste collection activities has also been fully rolled out.

In line with the requirements of the End of Life vehicles directive the focus now is on bringing any non compliant waste dismantlers into line with that directive's requirements and local authorities have been instructed to give this priority in their enforcement plans – see section D.

In addition, in response to further Commission concerns regarding gaps in the Irish legislative system the WASTE MANAGEMENT (REGISTRATION OF SEWAGE SLUDGE FACILITY) REGULATIONS 2010 (S.I. No. 32 of 2010) came into effect on 1 March 2010. These Regulations brought certain sewage sludge facilities – commonly referred to as sewage sludge hubs - which are privately owned or operated and which were not regulated under existing Irish waste legislation into line with the requirements or deliverables following on Case C494/01 (these facilities are being brought into a control mechanism under which general rules are being provided for) see web link:

³ Articles 4,5,8,9,10 and 13 of the Waste Framework Directive-see Appendix I

SECTION D

THE TWELVE SITES THEMSELVES THE SUBJECT OF THE ORIGINAL COMPLAINTS AND OTHERS TAKEN UNDER THE AMBIT OF THE JUDGEMENT PAGE 22

D1 – Update

A very detailed response has been required, including a commitment towards the rehabilitation of certain landfills - such as Tramore and Kilbarry in Waterford - and this has also necessitated the provision of offset for wetlands lost in areas requiring special protection as part of the solution - removal of waste from certain other wetlands illegally landfilled and a variety of other solutions which differ on a case by case basis.

The European Commission, in addition to examination of the proposed Irish response to these sites, has visited most of the sites during July and September 2006, November 2011 and May 2014 to determine the veracity of the response and to agree a road map in relation to closure on them.

Apart from these sites other EU Commission complaints on a variety of other sites and also old end of life vehicle unauthorized sites have been brought under the ambit of the judgement- the position on all of these is as follows:

- Dumping of Construction and Demolition waste in wetlands in Limerick in 1997 resolved - offset provided for wetland loss
- Storage of organic waste in lagoons in Ballard Co Cork and its disposal by landspreading by a contractor lacking a permit in 1997 resolved - the waste is removed.
- Storage of various types of waste without a permit in Pembrokestown, Whiterock Hill County Wexford in 1997 – resolved - site now licensed.
- Municipal landfill in Powerstown County Carlow operating without a licence in 1999 resolved - site licensed and remediation completed.
- Dumping of waste without a permit in a green area of the Poolbeg Peninsula Dublin City in 1999. Resolved - waste has been removed.
- Operation of 2 municipal landfills without a permit, one in Tramore, County Waterford and one in Kilbarry, Waterford City in 1999 – resolved - both sites now licensed, remediation is completed.
- Use by a private operator lacking a permit of 2 facilities in County Laois in 1999. Resolved - both sites now permitted and remediated
- Operation of a municipal landfill in Drumnaboden, County Donegal in 2000 resolved - site licensed and closed.

- Operation of a private waste storage and treatment facility at Cullinagh, County Cork in 1999 without a permit resolved - site licensed.
- Deposition of C and D waste by a private operator since 1990 in Greenore, County Louth resolved - waste removed-including from other areas, site remediated and offset provided
- Collection of waste by unlicensed and unregistered private undertakings in Bray County Wicklow in 2000 resolved - all waste collectors are now subject to waste collection permit. Enforcement against 'man in the van' type operators occurring.
- Tipping of various types of waste in 4 wetlands in County Waterford (Ballygunner, Ballynattin, Pickardstown and Castletown). All four sites have been remediated and the compensatory wetland was completed in May 2013

Also a number of other complaints /issues have fallen under the umbrella of this case and these are as follows.

D2 - RO2002/4218 , P2002/5228, P2002/4109, P2002/4292

- Granny Ferry, County Kilkenny, Resolved. 2 different owners. Landfill Levy of €180,000 paid on one site.
- Tinnapark/ Kilpedder, County Wicklow The flooding aspect has been resolved.
- Whitestown, County Wicklow – Resolved- all waste removed from the site. (see also section E below).
- Dunsink, Fingal, County Dublin, resolved - site licensed and closed.
- Ardristan, Tullow, County Carlow – Resolved- remediation works now complete.
- Murphy's Rock, Blackpool, County Cork - resolved – waste permit issued.

D3 - Other issues brought under the ambit of the case.

- ELV illegal operators – being pursued 5 small sites remain to be dealt with (see also section E below).
- Sewage sludge hub facilities – resolved - a new regulatory control regime has been put in place.
- Drivers Dyke, Waterford - illegal infill resolved.
- Irish Ispat - regularisation of the hazardous waste deposited at that site - Control of the site is being handed to the Irish Defence forces, planning permission and a waste licence has been obtained.