OPINION OF ADVOCATE GENERAL MISCHO

delivered on 28 May 2002 [1]

1. By application registered at the Court Registry on 16 March 2001, the Commission of the European Communities has brought an action against Ireland under Article 226 EC for a declaration that, by failing by 16 September 1999 to prepare and communicate to the Commission the plans, outlines and summaries required pursuant to Article 11 and Article 4(1) of Council Directive 96/59/EC on the disposal of polychlorinated biphenyls and polychlorinated terphenyls (PCB/PCT), [2] that Member State has failed to fulfil its obligations under the directive.

2. The purpose of Directive 96/59 (hereinafter 'the Directive') is, as stated by Article 1, '... to approximate the laws of the Member States on the controlled disposal of PCBs, the decontamination or disposal of equipment containing PCBs and/or the disposal of used PCBs in order to eliminate them completely on the basis of the provisions of this Directive.'

3. According to Article 3 of the Directive:

'Without prejudice to their international obligations, Member States shall take the necessary measures to ensure that used PCBs are disposed of and PCBs and equipment containing PCBs are decontaminated or disposed of as soon as possible. For the equipment and the PCBs contained therein, which are subject to inventory in accordance with Article 4(1), decontamination and/or disposal shall be effected at the latest by the end of 2010.'

4. The provisions in respect of which the Commission considers that Ireland has failed to fulfil its obligations are the following:

'*Article 4*

1. In order to comply with Article 3, Member States shall ensure that inventories are compiled of equipment with volumes of

1 — Original language: French.

2 — OJ 1996 L 243, p. 31.

more than 5 dm^3, and shall send summaries of such inventories to the Commission at the latest three years after the adoption of this Directive. In the case of power capacitators, the threshold of 5 dm^3 shall be understood as including all the separate elements of a combined set.

...

Article 11

1. Member States shall, within three years of the adoption of this Directive, draw up:

— plans for the decontamination and/or disposal of inventoried equipment and the PCBs contained therein;

— outlines for the collection and subsequent disposal of equipment which is not subject to inventory in accordance with Article 4(1), as referred to in Article 6(3).

2. Member States shall communicate these plans and outlines to the Commission without delay.'

On the admissibility of the application

5. In response to the complaint by the Commission that Ireland had not yet communicated to it such plans, outlines and summaries and that it was not in possession of any information enabling the Commission to conclude that these had none the less been prepared, the Irish Government firmly denies the charge relating to compliance with the obligations created by Article 4 of the Directive, but also, and above all, disputes the admissibility of the application.

6. That objection to admissibility is based on a complaint of breach of essential procedural requirements which is directed against the reasoned opinion and is to the effect that that opinion failed to take account of Ireland's response to the letter of formal notice sent to it by the Commission.

7. That allegation of irregularities in the pre-litigation procedure, which, according to settled case-law of the Court, may in fact lead to the infringement proceedings being declared inadmissible, makes it necessary

for me to examine first of all, and with the utmost care, the way in which that procedure was conducted.

8. If that examination confirms that the irregularities complained of by Ireland do exist, or indeed brings others to light, I will then have to go on to consider whether or not, given their seriousness and their effect on the Court's exercise of its jurisdiction under Article 226 EC, the irregularities thus identified must result in the application being dismissed as inadmissible.

9. In the letter of formal notice which it addressed to Ireland on 7 April 2000, the Commission first pointed out the obligations that Articles 4 and 11 of the Directive lay down for Member States, and the date of 16 September 1999, by which the measures adopted were to have been communicated to it. It then noted that it had not received any information from Ireland with respect to those measures — which, from its standpoint, a priori indicated a failure to fulfil obligations —, asked for clarification, and announced its intentions in the following terms:

'In these circumstances, acting under Article 226 of the EC Treaty, the Commission asks the Irish Government to submit its observations on the matters set out in this letter within two months of receiving it.

After taking note of these observations, the Commission may, if necessary, deliver a Reasoned Opinion under Article 226 of the EC Treaty. It may also deliver a Reasoned Opinion if those observations fail to reach it within the time stated.'

10. The Irish Government responded to that letter of formal notice by letter of 7 June 2000, registered at the Secretariat-General of the Commission on 13 June 2000.

11. In its letter the Irish Government explained that the relevant provisions of the Directive were transposed by the Waste Management (Hazardous Waste) Regulations 1998, which came into operation on 20 May 1998. Article 15 of those regulations, it pointed out, requires holders of PCBs, used PCBs or contaminated equipment to submit relevant information to the Environmental Protection Agency for the purposes of compiling an inventory as required by Article 4 of the Directive and to specify the measures taken or proposed for decontamination or disposal of the materials concerned.

12. With respect to the obligations created by Article 11 of the Directive, the Irish Government pointed out to the Commission that one of the functions of the

Environmental Protection Agency was, specifically, to adopt a National Hazardous Waste Management Plan.

13. It indicated that a draft of that plan had existed since September 1999 and that the public consultation to which it gave rise had ended, so that it would be finalised and adopted in the following months.

14. According to the Irish Government, that plan met the requirements of Article 11(1), first indent, of the Directive and would be notified to the Commission as soon as possible.

15. Moreover, again according to the letter of 7 June 2000, measures intended to fulfil the requirements of Article 11(1), second indent, of the Directive were on the point of being finalised and would be forwarded to the Commission.

16. As an enclosure, the Irish Government sent the Commission a copy of both the Waste Management (Hazardous Waste) Regulations and the two notifications made by the holders of PCBs.

17. The Commission's only response to that letter was to issue a reasoned opinion on 25 July 2000. In that opinion, the Commission, having reiterated the obligations that Article 4 and Article 11 of the Directive impose on Member States and having noted that Ireland did not dispute these, expressed itself in the following terms:

'Since Ireland did not communicate to the Commission, in accordance with Article 11 and Article 4(1) of the Directive, the abovementioned plans, outlines and summaries, and since the Commission was in possession of no other information enabling it to conclude that Ireland had prepared these plans, outlines and summaries, it was compelled to assume that Ireland had thus failed to fulfil its obligations under the abovementioned provisions of the Directive. It therefore gave the Irish Government the opportunity, by letter ref. SG (2000) D 102975 of 7 April 2000, in accordance with the procedure laid down in Article 226 of the Treaty, to submit within a period of two months its observations on these infringements of the provisions of the Directive.

Up to now, no official reply to that letter has been received. The Commission considers that it is the duty of the Irish authorities to initiate, in due time, the procedures necessary for complying with the provisions of Article 11 and Article 4(1) of the Directive so that such process is complete within the time-limit laid down, irrespective of the nature of such procedures, and to inform the Commission thereof.

In these circumstances, the Commission is obliged to find that Ireland has not, in accordance with the provisions of Article 11 and Article 4(1) of the Directive, yet prepared the abovementioned plans, outlines and summaries, nor has it communicated them to the Commission as it should have done by 16 September 1999 at the latest.

For the above reasons, the Commission having, by letter of 7 April 2000, given the Irish Government the opportunity to submit its observations, hereby declares as its reasoned opinion delivered pursuant to the first paragraph of Article 226 of the Treaty establishing the European Community that, by failing by 16 September 1999 to prepare and communicate to the Commission the plans, outlines and summaries required pursuant to Article 11 and Article 4(1) of Council Directive 96/59/EC on the disposal of polychlorinated biphenyls and polychlorinated terphenyls (PCB/PCT), Ireland has failed to fulfil its obligations under that Directive.

Pursuant to the second paragraph of Article 226 of the EC Treaty, the Commission requests Ireland to take the measures necessary to comply with this Reasoned Opinion within two months following notification thereof.'

18. By letter of 12 December 2000, the Irish Government responded to that reasoned opinion. In that letter mention is made of the Waste Management (Hazardous Waste) Regulations and the requirement for notification imposed on holders of PCBs.

19. Without referring explicitly to its reply to the letter of formal notice, the Irish Government indicated that it had sent the Commission copies of the two notifications received by the Environmental Protection Agency.

20. It explained that, while available information suggests that the disposal of PCBs has largely been achieved in Ireland, the Environmental Protection Agency nevertheless considered that the notifications received did not accurately reflect the situation with respect to holdings of PCBs and had therefore decided to engage consultants to identify all holders of contaminated equipment and to compile a full inventory. Those consultants began their study in 2001.

21. With respect to the plan that was to be drawn up under Article 11(1), first indent, of the Directive, the Irish Government stated that the National Hazardous Waste Management Plan would be adopted in the following month and submitted to the Commission.

22. Finally, with respect to the requirements set out in Article 11(1), second indent, of the Directive, the Irish Government stated that, following consideration of outlines submitted by other Member States, it would shortly submit its own outline to the Commission and that the study undertaken to satisfy the obligations set out in Article 4 of the Directive should prove useful in drawing up that outline.

23. Those assurances and commitments clearly did not convince the Commission, since it brought the action now under consideration.

24. In its application registered on 16 March 2001 the Commission, after noting the obligations imposed upon Member States by the Directive, summarised the course of the pre-litigation procedure in these terms:

'5. Since Ireland did not communicate to the Commission the abovementioned plans, outlines and summaries, and since the Commission was in possession of no other information enabling it to conclude that Ireland had prepared these plans, outlines and summaries, the Commission sent to Ireland on 7 April 2000 a letter of formal notice (Annex 1).

6. Ireland replied by letter of 7 June 2000 (Annex 2), enclosing a copy of the Waste Management (Hazardous Waste) Regulations 1998 which transposed into national law the relevant provisions of the Directive. The letter indicated that the necessary plans and outlines under Article 11(1) of the Directive were still in preparation. Also enclosed were copies of two notifications received by the Irish Environmental Protection Agency.

7. Not being satisfied with that response the Commission notified on 25 July 2000 a Reasoned Opinion (Annex 3) in which it

— declared that, by failing by 16 September 1999 to prepare and communicate to the Commission the plans, outlines and summaries required pursuant to Article 11 and Article 4(1) of the Directive, Ireland had failed to fulfil its obligations under the Directive, and

— requested Ireland to take the measures necessary to comply with the Opinion within two months.

8. By letter of 14 December 2000 (Annex 4) Ireland responded to the rea-

soned opinion. It indicated that further work was needed for the purpose of compiling a complete inventory, and that a study would commence early in 2001. It further indicated that the plan referred to in Article 11 of the Directive would be catered for by Ireland's National Hazardous Waste Management Plan, which was expected to be adopted and published within the next month. It also indicated that the outline referred to in Article 11 of the Directive would be submitted to the Commission shortly.

9. Since then the Commission has received no further communication from Ireland on this matter.'

25. Having thus assembled all the facts on the basis of which Ireland's challenge to the admissibility of the action must be evaluated, I must set out the arguments that were exchanged on this issue during the written procedure.

26. In its defence, the Irish Government, after pointing to the incorrect assertion contained in the reasoned opinion as to the absence of a reply on its part to the letter of formal notice, recalls that the purpose of the abovementioned letter is to give the Member State to which it is addressed the opportunity to comply with its obligations under Community law and to allow it to 'avail itself of its rights of defence against the Commission's complaints.'

27. It concludes from this that, where a Member State puts forward a defence in its reply to the letter of formal notice, as Ireland did in respect of Article 4(1) of the Directive, or furnishes reasons for the delay and specifies the way in which it intends to remedy the default, as Ireland did in respect of the obligations under Article 11 of the Directive, but the Commission asserts in its reasoned opinion that no such reply has been received to its letter of formal notice, the Commission is not entitled to rely on that reasoned opinion as the basis for bringing an action.

28. According to the Irish Government, the Commission 'must abandon its proceedings to the extent that they rely on that reasoned opinion', without prejudice, of course, to notification of a fresh reasoned opinion which takes into account the previously neglected response — a reasoned opinion that could then itself be followed by an application to the Court.

29. In response to this, the Commission, in its reply, contends, first, that the fact of its not having noted in its reasoned opinion the response to the letter of formal notice cannot be considerd as a violation of Ireland's rights of defence, since Ireland had, in that response, not provided any evidence to show that it had satisfied the obligations created by Articles 4 and 11 of the Directive. Second, the Commission points out that, in its response to the reasoned opinion, Ireland did not suggest

that that opinion was invalid or express any sense of prejudice. Finally, the Commission maintains that the reasons for which, in its order of 11 July 1995 in *Commission* v *Spain*, [3] the Court dismissed as inadmissible an action for failure to fulfil obligations which was brought following an irregular pre-litigation procedure are absent in the present case, given that Ireland did not present arguments on the substance at any time during the pre-litigation procedure.

30. In its rejoinder, the Irish Government states that is is not true to say, as the Commission has done, that it did not raise any defence on the substance in its reply to the letter of formal notice.

31. It points out that it had on that occasion informed the Commission of the obligation laid down in the Irish legislation for holders of PCBs to submit information making it possible for the Environmental Protection Agency to compile an inventory and had indicated that it was in the process of adopting the plans required by the Directive.

32. It thus considers, first, that if the Commission had taken that reply into consideration, 'it is quite likely that it would have engaged in further correspondence with Ireland before issuing a Reasoned Opinion' and, second, that its rights of defence were infringed.

33. The Irish Government contends that the fact that it did not refer to that deficiency in its response to the reasoned opinion is not a reason for the Court to ignore the manifest deficiencies in the reasoned opinion.

34. Since it has been established that the Commission wrongly stated in its reasoned opinion that it had not received any reply to its letter of formal notice, it seems to me that, if one is looking for a precedent that might provide food for thought, then there can be no avoiding a comparison of this case with Case C-266/94, cited above.

35. In that case, as in the one before us, the Commission had sent a letter of formal notice in which it noted that it had not received any communication from the Member State in question on the measures it had adopted in order to ensure the transposition of a directive.

36. In its response to that letter, the Kingdom of Spain had acknowledged that the national provisions necessary to ensure transposition were not yet in force but mentioned the provisions already adopted and soon to be adopted to ensure, as a transitional measure, the fulfilment of certain obligations imposed by that directive.

3 — Case C-266/94 *Commission* v *Spain* [1995] ECR I-1975.

37. The Commission had ignored that response, in that it had notified a reasoned opinion in which it indicated that it not received any response to its letter of formal notice.

38. On receipt of the reasoned opinion, the Kingdom of Spain had sent the Commission a letter in which it referred to its response to the letter of formal notice.

39. In its application, the Commission claimed that communication problems were the cause of its failure to refer to the reply to the letter of formal notice and in its rejoinder it claimed that its application, unlike the reasoned opinion, had taken into consideration the arguments put forward by the Kingdom of Spain, with the result that the provisions of the directive for which the Kingdom of Spain had adopted transitional tranposition measures were excluded from the subject-matter of the application.

40. The Court none the less declared the application to be inadmissible, reasoning in the following terms:

'15 The procedure laid down in Article 169 of the Treaty comprises two consecutive stages, the pre-litigation or administrative stage and the contentious stage before the Court.

16 The purpose of the pre-litigation procedure is to give the Member State concerned an opportunity to comply with its obligations under Community law or to avail itself of its right to defend itself against the complaints made by the Commission (see Case 293/85 *Commission* v *Belgium* [1998] ECR 305, paragraph 13).

17 The proper conduct of the pre-litigation procedure constitutes an essential guarantee required by the Treaty not only in order to protect the rights of the Member State concerned, but also so as to ensure that any contentious procedure will have a clearly defined dispute as its subject-matter.

18 It is only on the basis of a properly conducted pre-litigation procedure that the contentious procedure before the Court will enable the latter to judge whether the Member State has in fact failed to fulfil the specific obligations which the Commission alleges it has breached.

19 In the present case, the reasoned opinion wrongly stated that the letter of formal notice sent by the Commis-

sion had not yet elicited an official reply from the Kingdom of Spain.

20 The Commission therefore did not take account, at the stage of the reasoned opinion, of the resolutions submitted by the Kingdom of Spain in reply to its letter of formal notice, which, as the Commission moreover acknowledged, transposed some of the provisions of the directive.

21 The Commission attempted in its application to make good that omission by means of the following statement: "Without there being any need to consider whether or not the transposition into Spanish law of Articles 3, 4, and 7 of Directive 92/44/EEC by way of a decision is appropriate, it is evident that no measure has been adopted to implement the other provisions of that directive."

22 The result of its conduct however was that the parties only began to define with precision the nature and the scope of their dispute at the stage of the reply and the rejoinder.

23 That is not the procedure laid down in the Treaty.

24 In this case, although communication problems had given rise to a misunderstanding concerning the reasoned opinion, there was nothing to prevent the Commission withdrawing that opinion and examining the response of the Kingdom of Spain to the letter of formal notice. The Commission could then, if appropriate, have delivered a further reasoned opinion specifying the complaints which it intended to maintain.

25 It follows that one of the essential conditions for the admissibility of an action pursuant to Article 169 of the Treaty, the proper conduct of the pre-litigation procedure, is not satisfied in this case.

26 Accordingly, pursuant to Article 92(1) of the Rules of Procedure of the Court of Justice, the action must be dismissed as manifestly inadmissible.'

41. It seems to me that that statement of reasons, while it reiterates the objective of protecting the rights of defence which Article 226 EC pursues by providing for a pre-litigation procedure prior to the bringing of an action, primarily stresses the requirement that procedures be conducted properly. Even placed in that perspective, however, it remains subject to interpretation.

42. Thus, it may be understood either as making the proper conduct of the pre-litigation procedure an absolute requirement, non-compliance with which automatically entails the inadmissibility of the action, or as making the response to the irregularity of that procedure depend on the consequences to which it gave rise, and it would then be only because in the case before it 'the parties only began to define with precision the nature and the scope of their dispute at the stage of the reply and the rejoinder' that the Court dismissed the action as inadmissible.

43. That second hypothesis, however, sits uneasily with the traditional case-law which, while it strictly forbids the Commission to widen the subject-matter of its application, has, on the other hand, always authorised the withdrawal of certain complaints, that is to say, the narrowing of that subject-matter, which is precisely what the Commission did in that case, since, subsequent to the reasoned opinion, it withdrew its complaint that the Kingdom of Spain had not transposed certain provisions of the directive, namely, those that had given rise to transitional measures.

44. It seems to me, therefore, that the order in *Commission* v *Spain*, cited above, should be interpreted as making the proper conduct of the pre-litigation procedure a self-sufficient requirement, breach of which can only result in the application being inadmissible.

45. Moreover, confirmation of the importance the Court attaches to the proper conduct of the pre-litigation procedure is to be found in the judgment of 23 October 1997 in *Commission* v *France*, [4] in which it is stated as follows:

'In that regard, it must be remembered that the aim of the pre-litigation procedure provided for by Article 169 of the Treaty is to give the Member State an opportunity to justify its position or, if appropriate, to enable it to comply of its own accord with the requirements of the Treaty. The proper conduct of that procedure thus constitutes an essential guarantee which is required not only in order 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 (see the order of 11 July 1995 in Case C-266/94 *Commission* v *Spain* [1995] ECR I-1975, paragraph 17). It is therefore necessary, in assessing the admissibility of the application, to examine the conduct of the pre-litigation procedure.'

46. The terms used in that judgment were subsequently taken up in the judgment of 19 May 1998 in *Commission* v *Netherlands*, [5] in which, although the Court declined to consider the failure in the originating application to take account of any new matters of fact and law raised in the response to the reasoned opinion to be a ground for declaring the infringement proceedings inadmissible, it did so only after having noted that there was no dispute that

4 — C-159/94 *Commission* v *France* [1997] ECR I-5815.
5 — C-3/96 *Commission* v *Netherlands* [1998] ECR I-3031.

'the reasoned opinion and the procedure leading up to it were properly conducted', thus placing proper conduct among the values on which there can be no question of any compromise.

47. Even supposing, however, that when there has been improper conduct in the pre-litigation procedure there can be no finding of inadmissibility until after the facts of the case have been examined, I would still consider that in the present case there has been conduct on the part of the Commission that the Court cannot accept.

48. Whereas, in *Commission* v *Spain*, cited above, the Commission, having become aware, by the time it brought the action, that the reasoned opinion was wrongly based on the Kingdom of Spain's failure to reply to the letter of formal notice, had recognised its error and tried to minimise the consquences thereof, in the present case the Commission, far from admitting the erroneous nature of what it stated in the reasoned opinion, is trying with surprising self-assurance to conceal the error that it committed. We thus read in the application, following an account of the content of Ireland's reply to the letter of formal notice, that '[*N*]*ot being satisfied with this response*, the Commission notified on 25 July 2000 a Reasoned Opinion...'. [6]

6 — Emphasis added.

49. In its reasoned opinion, the Commission had stated that it had not received any reply to the letter of formal notice, and it must therefore be excluded that it had at that stage examined the reply that it had in fact received and had found it to be unsatisfactory.

50. The incorrect assertion contained in the application appears to me to be particularly serious since, by drafting an application that misrepresents the true situation, it is the Court itself that the Commission is misleading, thus patently failing to fulfil the obligation of sincere cooperation laid down in Article 10 EC, compliance with which it moreover systematically urges upon the Member States.

51. The conduct of the Commission, apart from the fact that, so it seems to me, it in itself calls for a sanction, has also infringed Ireland's rights of defence. Ireland, when it received the reasoned opinion, was entitled to consider that — however surprising it might appear — the arguments that it had put forward in reply to the letter of formal notice had not been examined by the Commission. Yet subsequently, in its application, the Commission informed Ireland, at the same time as the Court, that those arguments had, at the stage of the reasoned opinion, been rejected after being examined.

52. It can therefore in no way be excluded that if the reasoned opinion had dealt with the merits of Ireland's arguments, that

Member State might have chosen to respond to that opinion other than by repeating, essentially, the content of its first reply.

53. In a way, the situation here is comparable to that in *Commission* v *Spain*, cited above, since it was only belatedly, in the event at the stage of the application, that Ireland knew that the charge of infringement against which it had to defend itself was not failure to communicate to the Commission information that the latter was entitled to receive under the terms of the Directive, but rather the inadequacy, in the Commission's view, of the measures it had adopted.

54. It seems to me, therefore, that it can properly be said that Ireland was placed, from the perspective of equality of arms, in a situation detrimental to its defence.

55. Taking a slightly different approach, one might also point out that it is clear from the case-law, and in particular from the judgment of 23 February 1988 in *Commission* v *United Kingdom*,[7] that the pre-litigation procedure cannot be understood as a mere succession of procedural steps which the Commission must follow in order to gain access to the Court.

7 — Case 353/85 *Commission* v *United Kingdom* [1988] ECR 817.

56. That pre-litigation phase must, to adopt the terms used in that judgment, constitute a serious attempt to settle the dispute, that is to say, to render an application to the Court unnecessary.

57. I am well aware that such is not always the case and that, in particular, there are many instances in which the Member State proceeded against by the Commission does not cooperate in any clear way with a view to finding a solution that the Commission could accept without to some extent abandoning its role as guardian of the Treaties.

58. I none the less continue to believe that, so far as the Commission is concerned, precisely because it is the guardian of the Treaties, its conduct must be beyond reproach. In view of this, it has the duty to examine thoroughly the arguments set out in the reply to the letter of formal notice and, if these are not such as to alter its position, to refute them in a convincing manner.

59. In other words, although, unfortunately, the pre-litigation procedure too often gives the impression of being a dialogue of the deaf, the Commission must not be responsible in any way for that absence of constructive dialogue.

60. In the case before us the situation is precisely the opposite. The Commission was not content with ignoring the arguments presented by the Irish Governmment. It first of all claimed, in the reasoned opinion, that it had not received the letter in which those arguments were set out, and then presented, in the application, a new version of the facts in the light of which the arguments were not such as to satisfy it.

61. From this perspective as well, I consider that the action should be dismissed as inadmissible.

62. Such a finding of inadmissibility should, pursuant to Article 69(2) of the Rules of Procedure of the Court, be accompanied by an order that the Commission pay the costs.

On the substance of the case

63. In the event that the Court should concur with the arguments put forward by the Commission minimising the seriousness both of the irregularity in the pre-litigation procedure and of its consequences, and therefore not follow my Opinion so far as the issue of the admissibility of the application is concerned, I shall briefly examine the substance of the Commission's complaints.

64. As regards the obligations created by Article 4(1) of the Directive, I find it difficult to consider that Ireland would have fulfilled them by laying down an obligation for all economic operators to declare to the Environmental Protection Agency the equipment in their possession containing PCB volumes of more than 5 dm^3 and by communicating to the Commission the two notifications received to that effect.

65. It is quite clear that we are concerned with an obligation of result and not merely an obligation as to means.

66. Ireland, like the other Member States, had three years in which to compile the inventory required by that provision, that is to say, an inventory that correctly reflected the facts of the situation, and to send a summary of it to the Commission.

67. The Irish Government itself admits that its efforts to compile that inventory had, by the date on which the action was brought, produced very meagre results — to wit, two notifications, which cannot seriously be presented as adding up to a credible inventory. It then sets out the measures it adopted to collect the information needed to establish a realistic inventory.

68. Moreover, it is precisely because it was not possible, on the basis of those two notifications alone, to compile an inventory claiming to reflect the true situation that the Irish Government, in reply to the letter of formal notice, sent the notifications themselves and not, as that letter asked of it, a summary of an inventory which, in fact, did not exist.

69. It is to no avail that the defendant Government objects that the Commission indicated in its reasoned opinion that the process should be completed within three years 'irrespective of the nature of [the] procedures' put in place by the national authorities.

70. In using those terms, the Commission had obviously not waived receipt of the summaries of credible inventories — which was not, moreover, in its power to do. It merely intended to draw attention to the fact that the Directive established an obligation of result and it is therefore unacceptable to claim, as does the Irish Government, that the Commission should have accepted that 'any inadequacy in the comprehensiveness of the notification is a matter for Ireland alone and does not mean it has failed to fulfil its obligations under Article 4(1).'

71. With respect to the obligations under Article 11(1) of the Directive, a distinction should be made between those set out in the first indent, which concern the drawing-up of a plan for the decontamination and/or disposal of inventoried equipment and the PCBs contained therein, and those set out in the second indent, which concern the drawing-up of outlines for the collection and subsequent disposal of equipment which is not subject to an inventory in accordance with Article 4(1), and as referred to in Article 6(3).

72. With respect to the former obligations, Ireland claims that it fulfilled them by adopting and communicating by letter of 29 June 2001 the National Hazardous Waste Management Plan — a claim disputed by the Commission, which maintains that so long as the inventory required under Article 4 has not been compiled, one cannot speak of a plan concerning inventoried equipment.

73. I consider that objection by the Commission to be valid, in that I find it difficult to conceive of a plan in the abstract, one not proceeding from previously gathered data on the scope of the task which that plan must, precisely, make it possible to carry out.

74. For that reason, it seems difficult to follow the Irish Government when it claims complete autonomy for that obligation in relation to the obligation created by

Article 4(1) of the Directive, particularly since Article 11(1), first indent, refers to 'inventoried' equipment.

75. It must none the less be recognised that following the argument of the Commission would result in seriously curtailing the period of three years that Article 4(1) of the Directive grants to the Member States for compiling the inventory in question. Since the plan itself must be drawn up within a period of three years, to state that it cannot be drawn up until the inventory has been compiled amounts by implication to depriving the national authorities of part of the three-year period granted to them under Article 4(1) and, like it or not, therefore leads to the result that the drafting of that article may be perceived as misleading.

76. Be that as it may, I have to observe that the plan described by the Irish Government entered into operation after the expiry of the period of two months laid down in the reasoned opinion, which was notified, I would recall, in 2000.

77. With respect to the second series of obligations, Ireland states it complied with it by means of the Hazardous Waste Management Plan, while the Commission claims that it can find nothing in that plan to prove that the required outline has been drawn up. There again, without even needing to scrutinise that plan, I can only note that the time-limit set in the reasoned opinion was not respected.

Conclusion

78. On the basis of the foregoing, I propose that the Court should dismiss the application as inadmissible and order the Commission to pay the costs.

79. If, however, the application were held to be admissible, it should be held to be well founded, a declaration of infringement should be made in the terms applied for by the Commission, and Ireland should be ordered to pay the costs.