

СЪД НА ЕВРОПЕЙСКИЯ СЪЮЗ  
TRIBUNAL DE JUSTICIA DE LA UNIÓN EUROPEA  
SOUDNÍ DVŮR EVROPSKÉ UNIE  
DEN EUROPÆISKE UNIONS DOMSTOL  
GERICHTSHOF DER EUROPÄISCHEN UNION  
EUROOPA LIIDU KOHUS  
ΔΙΚΑΣΤΗΡΙΟ ΤΗΣ ΕΥΡΩΠΑΪΚΗΣ ΕΝΩΣΗΣ  
COURT OF JUSTICE OF THE EUROPEAN UNION  
COUR DE JUSTICE DE L'UNION EUROPÉENNE  
CÚIRT BHREITHIÚNAIS AN AONTAIS EORPAIGH  
SUD EUROPSKE UNIE  
CORTE DI GIUSTIZIA DELL'UNIONE EUROPEA



LUXEMBOURG

EIROPAS SAVIENĪBAS TIESA  
EUROPOS SĄJUNGOS TEISINGUMO TEISMAS  
AZ EURÓPAI UNIÓ BÍRÓSÁGA  
IL-QORTI TAL-ĠUSTIZZJA TAL-UNJONI EWROPEA  
HOF VAN JUSTITIE VAN DE EUROPESE UNIE  
TRYBUNAŁ SPRAWIEDLIWOŚCI UNII EUROPEJSKIEJ  
TRIBUNAL DE JUSTIÇA DA UNIÃO EUROPEIA  
CURTEA DE JUSTIȚIE A UNIUNII EUROPENE  
SÚDNY DVOR EURÓPSKEJ ÚNIE  
SODIŠČE EVROPSKE UNIJE  
EUROOPAN UNIONIN TUOMIOISTUIN  
EUROPEISKA UNIONENS DOMSTOL

## JUDGMENT OF THE COURT (Ninth Chamber)

20 November 2025 \*

### Table of contents

Legal context.....	4
European Union law .....	4
Irish law .....	18
The 2003 Regulations .....	18
The Water Services Act 2007 .....	19
The 2009 Surface Waters Regulations.....	20
The 2013 Act .....	21
The Abstractions Registration Regulations 2018 .....	22
Pre-litigation procedure .....	22
The action .....	23
First complaint: incomplete transposition of Article 2(38) of Directive 2000/60 .....	23
Arguments of the parties.....	23
Findings of the Court .....	25
Second complaint: incomplete transposition of Article 4(2) of Directive 2000/60 .....	27
Arguments of the parties.....	27
Findings of the Court .....	28
Third complaint: failure to transpose Article 5(2) of Directive 2000/60.....	29
Arguments of the parties.....	29
Findings of the Court .....	30
Fourth complaint: incorrect and incomplete transposition of Article 7(3) of Directive 2000/60 .....	31
Arguments of the parties.....	31

\* Language of the case: English.

Findings of the Court .....	33
Fifth complaint: incomplete transposition of Article 9(2) of Directive 2000/60 .....	35
Arguments of the parties .....	35
Findings of the Court .....	36
Sixth to ninth complaints: failure to transpose Article 11(3)(a) to (d) of Directive 2000/60 in relation to groundwater .....	39
Arguments of the parties .....	39
Findings of the Court .....	40
Tenth complaint: incorrect transposition of Article 11(3)(e) of Directive 2000/60 .....	42
Arguments of the parties .....	42
Findings of the Court .....	44
Eleventh complaint: incomplete transposition of Article 11(3)(i) of Directive 2000/60 .....	45
Arguments of the parties .....	45
Findings of the Court .....	46
Twelfth complaint: failure to transpose Article 11(3)(l) of Directive 2000/60 in relation to groundwater .....	49
Arguments of the parties .....	49
Findings of the Court .....	49
Thirteenth complaint: failure to transpose points 1.4 and 1.5 of Annex II to Directive 2000/60 .....	50
Arguments of the parties .....	50
Findings of the Court .....	51
Fourteenth complaint: failure to transpose points 1.3 to 1.3.5 and the first paragraph of point 2.4.5 of Annex V to Directive 2000/60 .....	53
Arguments of the parties .....	53
Findings of the Court .....	54
Costs.....	55

(Failure of a Member State to fulfil obligations – Environment – Directive 2000/60/EC – Community action in the field of water policy – Failure to transpose fully and correctly)

In Case C-204/24,

ACTION for failure to fulfil obligations under Article 258 TFEU, brought on 15 March 2024,

**European Commission**, represented by L. Armati and E. Sanfrutos Cano, acting as Agents,

applicant,

v

**Ireland**, represented by M. Browne, Chief State Solicitor, S. Finnegan and A. Joyce, acting as Agents, and by C. Donnelly, Senior Counsel, and D. Fennelly, Barrister-at-Law,

defendant,

THE COURT (Ninth Chamber),

composed of M. Condlanzi (Rapporteur), President of the Chamber, N. Jääskinen and R. Frendo, Judges,

Advocate General: J. Kokott,

Registrar: A. Calot Escobar,

having regard to the written procedure,

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

gives the following

### **Judgment**

- 1 By its application, the European Commission requests the Court to declare that, by failing to correctly and fully transpose Article 2(38), Article 4(2), Article 5(2), Article 7(3), Article 9(2) and Article 11(3)(a) to (e), (i) and (l) of, as well as Annexes II and V to, Directive 2000/60/EC of the European Parliament and of the Council of 23 October 2000 establishing a framework for Community action in

the field of water policy (OJ 2000 L 327, p. 1), Ireland has failed to fulfil its obligations under that directive.

## **Legal context**

### *European Union law*

2 Recital 26 of Directive 2000/60 is worded as follows:

‘Member States should aim to achieve the objective of at least good water status by defining and implementing the necessary measures within integrated programmes of measures, taking into account existing Community requirements. Where good water status already exists, it should be maintained. For groundwater, in addition to the requirements of good status, any significant and sustained upward trend in the concentration of any pollutant should be identified and reversed.’

3 According to Article 1 of Directive 2000/60:

‘The purpose of this Directive is to establish a framework for the protection of inland surface waters, transitional waters, coastal waters and groundwater which:

- (a) prevents further deterioration and protects and enhances the status of aquatic ecosystems and, with regard to their water needs, terrestrial ecosystems and wetlands directly depending on the aquatic ecosystems;

...

and thereby contributes to:

- the provision of the sufficient supply of good quality surface water and groundwater as needed for sustainable, balanced and equitable water use,

...’

4 Article 2 of that directive, entitled ‘Definitions’, provides, in paragraphs 8, 9, 21 and 38 thereof:

‘For the purposes of this Directive the following definitions shall apply:

...

- 8. “Artificial water body” means a body of surface water created by human activity.
- 9. “Heavily modified water body” means a body of surface water which as a result of physical alterations by human activity is substantially changed in

character, as designated by the Member State in accordance with the provisions of Annex II.

...

21. “Ecological status” is an expression of the quality of the structure and functioning of aquatic ecosystems associated with surface waters, classified in accordance with Annex V.

...

38. “Water services” means all services which provide, for households, public institutions or any economic activity:

- (a) abstraction, impoundment, storage, treatment and distribution of surface water or groundwater,
- (b) waste-water collection and treatment facilities which subsequently discharge into surface water’.

5 Article 4 of the said directive, entitled ‘Environmental objectives’, provides, in paragraphs 1 and 2 thereof:

‘1. In making operational the programmes of measures specified in the river basin management plans:

...

(b) for groundwater

- (i) Member States shall implement the measures necessary to prevent or limit the input of pollutants into groundwater and to prevent the deterioration of the status of all bodies of groundwater, subject to the application of paragraphs 6 and 7 and without prejudice to paragraph 8 of this Article and subject to the application of Article 11(3)(j);
- (ii) Member States shall protect, enhance and restore all bodies of groundwater, ensure a balance between abstraction and recharge of groundwater, with the aim of achieving good groundwater status at the latest 15 years after the date of entry into force of this Directive, in accordance with the provisions laid down in Annex V, subject to the application of extensions determined in accordance with paragraph 4 and to the application of paragraphs 5, 6 and 7 without prejudice to paragraph 8 of this Article and subject to the application of Article 11(3)(j);
- (iii) Member States shall implement the measures necessary to reverse any significant and sustained upward trend in the concentration of any

pollutant resulting from the impact of human activity in order progressively to reduce pollution of groundwater.

...

(c) for protected areas

Member States shall achieve compliance with any standards and objectives at the latest 15 years after the date of entry into force of this Directive, unless otherwise specified in the Community legislation under which the individual protected areas have been established.

2. Where more than one of the objectives under paragraph 1 relates to a given body of water, the most stringent shall apply.'

6 Under Article 5 of the same directive, entitled 'Characteristics of the river basin district, review of the environmental impact of human activity and economic analysis of water use':

'1. Each Member State shall ensure that for each river basin district or for the portion of an international river basin district falling within its territory:

- an analysis of its characteristics,
- a review of the impact of human activity on the status of surface waters and on groundwater, and
- an economic analysis of water use

is undertaken according to the technical specifications set out in Annexes II and III and that it is completed at the latest four years after the date of entry into force of this Directive.

2. The analyses and reviews mentioned under paragraph 1 shall be reviewed, and if necessary updated at the latest 13 years after the date of entry into force of this Directive and every six years thereafter.'

7 Article 7 of Directive 2000/60, entitled 'Waters used for the abstraction of drinking water', provides:

'1. Member States shall identify, within each river basin district:

- all bodies of water used for the abstraction of water intended for human consumption providing more than 10 m<sup>3</sup> a day as an average or serving more than 50 persons, and
- those bodies of water intended for such future use.

...

3. Member States shall ensure the necessary protection for the bodies of water identified with the aim of avoiding deterioration in their quality in order to reduce the level of purification treatment required in the production of drinking water. Member States may establish safeguard zones for those bodies of water.'

8 Article 8 of that directive, entitled 'Monitoring of surface water status, groundwater status and protected areas', provides, in paragraphs 1 and 2 thereof:

'1. Member States shall ensure the establishment of programmes for the monitoring of water status in order to establish a coherent and comprehensive overview of water status within each river basin district:

- for surface waters such programmes shall cover:
  - (i) the volume and level or rate of flow to the extent relevant for ecological and chemical status and ecological potential, and
  - (ii) the ecological and chemical status and ecological potential;
- for groundwaters such programmes shall cover monitoring of the chemical and quantitative status,

...

2. These programmes shall be operational at the latest six years after the date of entry into force of this Directive unless otherwise specified in the legislation concerned. Such monitoring shall be in accordance with the requirements of Annex V.'

9 Article 9 of the said directive, entitled 'Recovery of costs for water services', provides, in paragraphs 1 and 2 thereof:

'1. Member States shall take account of the principle of recovery of the costs of water services, including environmental and resource costs, having regard to the economic analysis conducted according to Annex III, and in accordance in particular with the polluter pays principle.

Member States shall ensure by 2010

- that water-pricing policies provide adequate incentives for users to use water resources efficiently, and thereby contribute to the environmental objectives of this Directive,
- an adequate contribution of the different water uses, disaggregated into at least industry, households and agriculture, to the recovery of the costs of water services, based on the economic analysis conducted according to Annex III and taking account of the polluter pays principle.

...

2. Member States shall report in the river basin management plans on the planned steps towards implementing paragraph 1 which will contribute to achieving the environmental objectives of this Directive and on the contribution made by the various water uses to the recovery of the costs of water services.’

10 Article 11 of the same directive, entitled ‘Programme of measures’, provides:

‘1. Each Member State shall ensure the establishment for each river basin district, or for the part of an international river basin district within its territory, of a programme of measures, taking account of the results of the analyses required under Article 5, in order to achieve the objectives established under Article 4. Such programmes of measures may make reference to measures following from legislation adopted at national level and covering the whole of the territory of a Member State. Where appropriate, a Member State may adopt measures applicable to all river basin districts and/or the portions of international river basin districts falling within its territory.

2. Each programme of measures shall include the “basic” measures specified in paragraph 3 and, where necessary, “supplementary” measures.

3. “Basic measures” are the minimum requirements to be complied with and shall consist of:

- (a) those measures required to implement Community legislation for the protection of water, including measures required under the legislation specified in Article 10 and in part A of Annex VI;
- (b) measures deemed appropriate for the purposes of Article 9;
- (c) measures to promote an efficient and sustainable water use in order to avoid compromising the achievement of the objectives specified in Article 4;
- (d) measures to meet the requirements of Article 7, including measures to safeguard water quality in order to reduce the level of purification treatment required for the production of drinking water;
- (e) controls over the abstraction of fresh surface water and groundwater, and impoundment of fresh surface water, including a register or registers of water abstractions and a requirement of prior authorisation for abstraction and impoundment. These controls shall be periodically reviewed and, where necessary, updated. Member States can exempt from these controls, abstractions or impoundments which have no significant impact on water status;

...

- (i) for any other significant adverse impacts on the status of water identified under Article 5 and Annex II, in particular measures to ensure that the

hydromorphological conditions of the bodies of water are consistent with the achievement of the required ecological status or good ecological potential for bodies of water designated as artificial or heavily modified. Controls for this purpose may take the form of a requirement for prior authorisation or registration based on general binding rules where such a requirement is not otherwise provided for under Community legislation. Such controls shall be periodically reviewed and, where necessary, updated;

...

- (l) any measures required to prevent significant losses of pollutants from technical installations, and to prevent and/or to reduce the impact of accidental pollution incidents for example as a result of floods, including through systems to detect or give warning of such events including, in the case of accidents which could not reasonably have been foreseen, all appropriate measures to reduce the risk to aquatic ecosystems.

...’

- 11 Article 13 of Directive 2000/60, entitled ‘River basin management plans’, is worded as follows:

‘1. Member States shall ensure that a river basin management plan is produced for each river basin district lying entirely within their territory.

...

4. The river basin management plan shall include the information detailed in Annex VII.

...

6. River basin management plans shall be published at the latest nine years after the date of entry into force of this Directive.

7. River basin management plans shall be reviewed and updated at the latest 15 years after the date of entry into force of this Directive and every six years thereafter.’

- 12 By virtue of Article 24(1) of that directive, the Member States had to bring into force the laws, regulations and administrative provisions necessary to comply with the directive by 22 December 2003 at the latest.

- 13 Section 1 of Annex II to Directive 2000/60, entitled ‘Surface waters’, contains points 1.1, 1.4 and 1.5, which provide:

‘1.1. Characterisation of surface water body types

Member States shall identify the location and boundaries of bodies of surface water and shall carry out an initial characterisation of all such bodies in accordance with the following methodology. Member States may group surface water bodies together for the purposes of this initial characterisation.

- (i) The surface water bodies within the river basin district shall be identified as falling within either one of the following surface water categories – rivers, lakes, transitional waters or coastal waters – or as artificial surface water bodies or heavily modified surface water bodies.

...

- (v) For artificial and heavily modified surface water bodies the differentiation shall be undertaken in accordance with the descriptors for whichever of the surface water categories most closely resembles the heavily modified or artificial water body concerned.

- (vi) Member States shall submit to the Commission a map or maps (in a GIS format) of the geographical location of the types consistent with the degree of differentiation required under system A.

...

#### 1.4. Identification of Pressures

Member States shall collect and maintain information on the type and magnitude of the significant anthropogenic pressures to which the surface water bodies in each river basin district are liable to be subject, in particular the following.

Estimation and identification of significant point source pollution, in particular by substances listed in Annex VIII, from urban, industrial, agricultural and other installations and activities, based, inter alia, on information gathered under:

- (i) Articles 15 and 17 of [Council] Directive 91/271/EEC [of 21 May 1991 concerning urban waste-water treatment (OJ 1991 L 135, p. 40)];
- (ii) Articles 9 and 15 of [Council] Directive 96/61/EC [of 24 September 1996 concerning integrated pollution prevention and control (OJ 1996 L 257, p. 26)],

and for the purposes of the initial river basin management plan:

- (iii) Article 11 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)]; and
- (iv) [Council] Directives 75/440/EEC [of 16 June 1975 concerning the quality required of surface water intended for the abstraction of drinking water in the Member States (OJ 1975 L 194, p. 26)], 76/160/EEC [of 8 December

1975 concerning the quality of bathing water (OJ 1976 L 31, p. 1)], 78/659/EEC [of 18 July 1978 on the quality of fresh waters needing protection or improvement in order to support fish life (OJ 1978 L 222, p. 1)] and 79/923/EEC [of 30 October 1979 on the quality required of shellfish waters (OJ 1979 L 281, p. 47)].

Estimation and identification of significant point source pollution, in particular by substances listed in Annex VIII, from urban, industrial, agricultural and other installations and activities[,] based, inter alia, on information gathered under:

- (i) Articles 3, 5 and 6 of [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)];
- (ii) Articles 7 and 17 of [Council] Directive 91/414/EEC [of 15 July 1991 concerning the placing of plant protection products on the market (OJ 1991 L 230, p. 1)];
- (iii) Directive 98/8/EC [of the European Parliament and of the Council of 16 February 1998 concerning the placing of biocidal products on the market (OJ 1998 L 123, p. 1)];

and for the purposes of the first river basin management plan:

- (iv) Directives 75/440/EEC, 76/160/EEC, 76/464/EEC, 78/659/EEC and 79/923/EEC.

Estimation and identification of significant water abstraction for urban, industrial, agricultural and other uses, including seasonal variations and total annual demand, and of loss of water in distribution systems.

Estimation and identification of the impact of significant water flow regulation, including water transfer and diversion, on overall flow characteristics and water balances.

Identification of significant morphological alterations to water bodies.

Estimation and identification of other significant anthropogenic impacts on the status of surface waters.

Estimation of land use patterns, including identification of the main urban, industrial and agricultural areas and, where relevant, fisheries and forests.

#### 1.5. Assessment of Impact

Member States shall carry out an assessment of the susceptibility of the surface water status of bodies to the pressures identified above.

Member States shall use the information collected above, and any other relevant information including existing environmental monitoring data, to carry out an assessment of the likelihood that surface waters bodies within the river basin district will fail to meet the environmental quality objectives set for the bodies under Article 4. Member States may utilise modelling techniques to assist in such an assessment.

For those bodies identified as being at risk of failing the environmental quality objectives, further characterisation shall, where relevant, be carried out to optimise the design of both the monitoring programmes required under Article 8, and the programmes of measures required under Article 11.’

- 14 Section 1 of Annex V to Directive 2000/60, entitled ‘Surface water status’, includes a point 1.3, entitled ‘Monitoring of ecological status and chemical status for surface waters’, which is worded as follows:

‘The surface water monitoring network shall be established in accordance with the requirements of Article 8. The monitoring network shall be designed so as to provide a coherent and comprehensive overview of ecological and chemical status within each river basin and shall permit classification of water bodies into five classes consistent with the normative definitions in section 1.2. Member States shall provide a map or maps showing the surface water monitoring network in the river basin management plan.

On the basis of the characterisation and impact assessment carried out in accordance with Article 5 and Annex II, Member States shall for each period to which a river basin management plan applies, establish a surveillance monitoring programme and an operational monitoring programme. Member States may also need in some cases to establish programmes of investigative monitoring.

Member States shall monitor parameters which are indicative of the status of each relevant quality element. In selecting parameters for biological quality elements Member States shall identify the appropriate taxonomic level required to achieve adequate confidence and precision in the classification of the quality elements. Estimates of the level of confidence and precision of the results provided by the monitoring programmes shall be given in the plan.

#### 1.3.1. Design of surveillance monitoring

##### *Objective*

Member States shall establish surveillance monitoring programmes to provide information for:

- supplementing and validating the impact assessment procedure detailed in Annex II,
- the efficient and effective design of future monitoring programmes,

- the assessment of long-term changes in natural conditions, and
- the assessment of long-term changes resulting from widespread anthropogenic activity.

The results of such monitoring shall be reviewed and used, in combination with the impact assessment procedure described in Annex II, to determine requirements for monitoring programmes in the current and subsequent river basin management plans.

#### *Selection of monitoring points*

Surveillance monitoring shall be carried out of sufficient surface water bodies to provide an assessment of the overall surface water status within each catchment or subcatchments within the river basin district. In selecting these bodies Member States shall ensure that, where appropriate, monitoring is carried out at points where:

- the rate of water flow is significant within the river basin district as a whole; including points on large rivers where the catchment area is greater than 2 500 km<sup>2</sup>,
- the volume of water present is significant within the river basin district, including large lakes and reservoirs,
- significant bodies of water cross a Member State boundary,
- sites are identified under [Council] Decision 77/795/EEC [of 12 December 1977 establishing a common procedure for the exchange of information on the quality of surface fresh water in the Community (OJ 1977 L 334, p. 29)], and
- at such other sites as are required to estimate the pollutant load which is transferred across Member State boundaries, and which is transferred into the marine environment.

#### *Selection of quality elements*

Surveillance monitoring shall be carried out for each monitoring site for a period of one year during the period covered by a river basin management plan for:

- parameters indicative of all biological quality elements,
- parameters indicative of all hydromorphological quality elements,
- parameters indicative of all physico-chemical quality elements,
- priority list pollutants which are discharged into the river basin or sub-basin, and

- other pollutants discharged in significant quantities in the river basin or sub-basin,

unless the previous surveillance monitoring exercise showed that the body concerned reached good status and there is no evidence from the review of impact of human activity in Annex II that the impacts on the body have changed. In these cases, surveillance monitoring shall be carried out once every three river basin management plans.

### 1.3.2. Design of operational monitoring

Operational monitoring shall be undertaken in order to:

- establish the status of those bodies identified as being at risk of failing to meet their environmental objectives, and
- assess any changes in the status of such bodies resulting from the programmes of measures.

The programme may be amended during the period of the river basin management plan in the light of information obtained as part of the requirements of Annex II or as part of this Annex, in particular to allow a reduction in frequency where an impact is found not to be significant or the relevant pressure is removed.

#### *Selection of monitoring sites*

Operational monitoring shall be carried out for all those bodies of water which on the basis of either the impact assessment carried out in accordance with Annex II or surveillance monitoring are identified as being at risk of failing to meet their environmental objectives under Article 4 and for those bodies of water into which priority list substances are discharged. Monitoring points shall be selected for priority list substances as specified in the legislation laying down the relevant environmental quality standard. In all other cases, including for priority list substances where no specific guidance is given in such legislation, monitoring points shall be selected as follows:

- for bodies at risk from significant point source pressures, sufficient monitoring points within each body in order to assess the magnitude and impact of the point source. Where a body is subject to a number of point source pressures monitoring points may be selected to assess the magnitude and impact of these pressures as a whole,
- for bodies at risk from significant diffuse source pressures, sufficient monitoring points within a selection of the bodies in order to assess the magnitude and impact of the diffuse source pressures. The selection of bodies shall be made such that they are representative of the relative risks of the occurrence of the diffuse source pressures, and of the relative risks of the failure to achieve good surface water status,

- for bodies at risk from significant hydromorphological pressure, sufficient monitoring points within a selection of the bodies in order to assess the magnitude and impact of the hydromorphological pressures. The selection of bodies shall be indicative of the overall impact of the hydromorphological pressure to which all the bodies are subject.

#### *Selection of quality elements*

In order to assess the magnitude of the pressure to which bodies of surface water are subject Member States shall monitor for those quality elements which are indicative of the pressures to which the body or bodies are subject. In order to assess the impact of these pressures, Member States shall monitor as relevant:

- parameters indicative of the biological quality element, or elements, most sensitive to the pressures to which the water bodies are subject,
- all priority substances discharged, and other pollutants discharged in significant quantities,
- parameters indicative of the hydromorphological quality element most sensitive to the pressure identified.

#### 1.3.3. Design of investigative monitoring

##### *Objective*

Investigative monitoring shall be carried out:

- where the reason for any exceedances is unknown,
- where surveillance monitoring indicates that the objectives set out in Article 4 for a body of water are not likely to be achieved and operational monitoring has not already been established, in order to ascertain the causes of a water body or water bodies failing to achieve the environmental objectives, or
- to ascertain the magnitude and impacts of accidental pollution,

and shall inform the establishment of a programme of measures for the achievement of the environmental objectives and specific measures necessary to remedy the effects of accidental pollution.

#### 1.3.4. Frequency of monitoring

For the surveillance monitoring period, the frequencies for monitoring parameters indicative of physico-chemical quality elements given below should be applied unless greater intervals would be justified on the basis of technical knowledge and expert judgement. For biological or hydromorphological quality elements monitoring shall be carried out at least once during the surveillance monitoring period.

For operational monitoring, the frequency of monitoring required for any parameter shall be determined by Member States so as to provide sufficient data for a reliable assessment of the status of the relevant quality element. As a guideline, monitoring should take place at intervals not exceeding those shown in the table below unless greater intervals would be justified on the basis of technical knowledge and expert judgement.

Frequencies shall be chosen so as to achieve an acceptable level of confidence and precision. Estimates of the confidence and precision attained by the monitoring system used shall be stated in the river basin management plan.

Monitoring frequencies shall be selected which take account of the variability in parameters resulting from both natural and anthropogenic conditions. The times at which monitoring is undertaken shall be selected so as to minimise the impact of seasonal variation on the results, and thus ensure that the results reflect changes in the water body as a result of changes due to anthropogenic pressure. Additional monitoring during different seasons of the same year shall be carried out, where necessary, to achieve this objective.

...

#### 1.3.5. Additional monitoring requirements for protected areas

The monitoring programmes required above shall be supplemented in order to fulfil the following requirements:

##### *Drinking water abstraction points*

Bodies of surface water designated in Article 7 which provide more than 100 m<sup>3</sup> a day as an average shall be designated as monitoring sites and shall be subject to such additional monitoring as may be necessary to meet the requirements of that Article. Such bodies shall be monitored for all priority substances discharged and all other substances discharged in significant quantities which could affect the status of the body of water and which are controlled under the provisions of the Drinking Water Directive. Monitoring shall be carried out in accordance with the frequencies set out below:

...

##### *Habitat and species protection areas*

Bodies of water forming these areas shall be included within the operational monitoring programme referred to above where, on the basis of the impact assessment and the surveillance monitoring, they are identified as being at risk of failing to meet their environmental objectives under Article 4. Monitoring shall be carried out to assess the magnitude and impact of all relevant significant pressures on these bodies and, where necessary, to assess changes in the status of such bodies resulting from the programmes of measures. Monitoring shall continue

until the areas satisfy the water-related requirements of the legislation under which they are designated and meet their objectives under Article 4.

...’

- 15 Point 2 of Annex V to that directive, relating to ‘Groundwater’, includes a point 2.4, entitled ‘Monitoring of groundwater chemical status’, point 2.4.5 of which, itself entitled ‘Interpretation and presentation of groundwater chemical status’, provides:

‘In assessing status, the results of individual monitoring points within a groundwater body shall be aggregated for the body as a whole. Without prejudice to the Directives concerned, for good status to be achieved for a groundwater body, for those chemical parameters for which environmental quality standards have been set in Community legislation:

- the mean value of the results of monitoring at each point in the groundwater body or group of bodies shall be calculated, and
- in accordance with Article 17 these mean values shall be used to demonstrate compliance with good groundwater chemical status.

Subject to point 2.5, Member States shall provide a map of groundwater chemical status, colour-coded as indicated below:

Good: green

Poor: red

Member States shall also indicate by a black dot on the map, those groundwater bodies which are subject to a significant and sustained upward trend in the concentrations of any pollutant resulting from the impact of human activity. Reversal of a trend shall be indicated by a blue dot on the map.

These maps shall be included in the river basin management plan.’

- 16 Annex VII to the said directive, relating to river basin management plans, lists the elements which must be included in each plan as well as in its updates. Pursuant to point 7.2 of part A of that Annex VII, the plan is to contain a report on the practical steps and measures taken to apply the principle of recovery of the costs of water use in accordance with Article 9 of the same directive.

***Irish law***

*The 2003 Regulations*

- 17 The European Communities (Water Policy) Regulations 2003 (S.I. No 722 of 2003), in the version in force on 30 December 2020 ('the 2003 Regulations'), constitute the main measure transposing Directive 2000/60 into Irish law.
- 18 According to regulation 2(2) of those regulations, 'any word or expression which is used in these Regulations and is also used in [Directive 2000/60] has the same meaning as in the Directive except where these Regulations provide otherwise.'
- 19 Regulation 2(3) of those regulations defines 'local authority', for the purposes of the same regulations, as a city council or a county council and 'the relevant local authorities' in relation to a river basin district as the local authorities whose functional areas lie wholly or partly within that river basin district.
- 20 Regulation 3(1)(a) of the 2003 Regulations requires each public authority to 'exercise its functions in a manner which is consistent with the provisions of [Directive 2000/60] and which achieves or promotes compliance with the requirements of th[at d]irective'.
- 21 Under regulation 3(1)(b) of those regulations, each public authority has the duty to 'take such actions as may be appropriate in the context of its functions to secure compliance with [Directive 2000/60] and with the provisions of any river basin management plan made, and any programme of measures established, in accordance with these Regulations'.
- 22 According to regulation 6(2) of those regulations, the Environmental Protection Agency ('the EPA') is to take such measures as it considers appropriate to promote and facilitate the coordination of activities for the purposes of Articles 4, 5, 7, 10, 11 and 13 of Directive 2000/60.
- 23 Regulation 7(1) of the same regulations provides that the EPA must, by 22 December 2004 at the latest, inter alia map the location, identify and provide a typology of the surface waters within a river basin district, for the purposes of Article 5 of Directive 2000/60.
- 24 Regulation 7(2) of the 2003 Regulations provides that the relevant local authorities must, by 22 December 2004 at the latest, carry out, in accordance with Article 5 of Directive 2000/60, for each river basin district, first, an analysis of its characteristics, second, a review of the impact of human activity on the status of surface waters and of groundwater and, third, an economic analysis of water use.
- 25 Under regulation 7(3) of those regulations, the relevant local authorities must, by 22 December 2004 at the latest, send to the EPA a summary report of the analyses and review carried out in accordance with paragraph 2 of that regulation 7.

- 26 It is apparent from regulation 7(5) and (6) of those regulations that the EPA must publish and send to the competent minister and to the Commission a summary report of the analyses and review carried out in accordance with paragraph 2 of that regulation 7 and that the EPA and the relevant local authorities must, by 22 December 2013 and every six years thereafter, review and, if necessary, update the mapping, information, analyses and reviews first carried out in accordance with paragraphs 1 and 2 of the said regulation 7.
- 27 Regulation 10(1) of the same regulations provides that the EPA is to prepare, by 22 June 2006 at the latest, a programme of monitoring of water status in order to provide a coherent and comprehensive overview of water status within each river basin district in accordance with Article 7(1) and Article 8 of Directive 2000/60.
- 28 Regulation 10(2) of the 2003 Regulations sets out the purpose of that programme, reproducing the provisions of Article 8(1) of Directive 2000/60, while paragraphs 3 to 8 of that regulation 10 describe the communication and publication obligations of the said programme and the ways in which it may be amended by the Minister.
- 29 According to regulation 12(1)(a) of those regulations, the relevant local authorities are to establish environmental objectives in relation to each river basin district in accordance with Article 4 of Directive 2000/60.
- 30 Regulation 12(2) of the said regulations states:
- ‘A programme of measures shall include the basic measures specified in Article 11(3) of [Directive 2000/60] and such supplementary measures specified in Article 11(4) of [that d]irective as the relevant authorities consider appropriate.’
- 31 Regulation 13(1)(a) of the same regulations provides that the relevant local authorities in relation to each river basin district must, by 22 June 2009 at the latest, make a river basin management plan in accordance with Article 13 of Directive 2000/60.
- 32 Regulation 13(3) of the 2003 Regulations indicates that the river basin management plan must include the information set out in Annex VII to Directive 2000/60.

*The Water Services Act 2007*

- 33 Section 2(1) of the Water Services Act 2007, in the version applicable on 30 December 2020 (‘the Water Services Act 2007’), defines ‘water services’ as follows:
- ‘all services, including the provision of water intended for human consumption, which provide storage, treatment or distribution of surface water, groundwater or water supplied by a water services authority, or waste water collection, storage, treatment or disposal, but does not include—

- (a) provision by a person of pipes and related accessories for the distribution of water, or collection of waste water, to facilitate the subsequent connection by a provider of water services of another person to a water supply or waste water collection service, and
  - (b) such other exemptions as the Minister may prescribe, for the purposes of the application of licensing provisions under Part 6’.
- 34 According to Section 31(2)(k) of that act, a water services authority may itself provide water services or supervise the provision of those services by other persons for domestic and non-domestic requirements in its functional area, taking full account of any river basin management plan or programme of measures under Directive 2000/60.

*The 2009 Surface Waters Regulations*

- 35 According to regulation 3 of the European Communities Environmental Objectives (Surface Waters) Regulations 2009 (S.I. No 272 of 2009), in the version applicable on 30 December 2020 (‘the 2009 Surface Waters Regulations’), a ‘public authority’, for the purposes of those regulations, is defined as an authority or a State-sponsored body listed in Schedule 1 to those regulations.
- 36 Part II of the same regulations, entitled ‘Duties on public authorities and other persons’, includes, inter alia, regulations 4 to 6 thereof.
- 37 Under regulation 4 of the 2009 Surface Waters Regulations, a public authority whose functions may affect the achievement of the environmental objectives established by those regulations must undertake those functions in a manner that will, as far as practicable, promote compliance with the requirements of those regulations.
- 38 Regulation 6 of the same regulations provides:
- ‘In order to achieve the environmental objectives established by these Regulations, and without prejudice to the generality of Article 4 or Article 5, measures shall, taking account of the results of the analyses undertaken for the purpose of Article 7 of the 2003 Regulations, include the measures listed in Schedule 2.’
- 39 Schedule 1 to the 2009 Surface Waters Regulations lists the public authorities to which those regulations are to apply.
- 40 Schedule 2 to those regulations, entitled ‘Measures for the purpose of these Regulations’, states:
- ‘1. Measures required to implement Community legislation for the protection of surface water.

2. Measures in accordance with national policy for the recovery of the costs of water services for the purposes of Article 9 of [Directive 2000/60].

3. Measures to promote an efficient and sustainable water use in order to avoid compromising the achievement of the environmental objectives established by these Regulations.

4. Measures to meet the requirements of Article 7 of [Directive 2000/60], including measures to safeguard water quality in order to reduce the level of purification treatment required for the production of drinking water.

5. Measures to control the abstraction and the impoundment of fresh surface water, including a register or registers of water abstractions and a requirement of prior authorisation for abstraction and impoundment. ...

...

8. For any other significant adverse impacts on the status of surface water identified during the review carried out for the purpose of [regulation] 7 of the 2003 Regulations, in particular measures to ensure that the hydromorphological conditions of bodies of water are consistent with the achievement of the required ecological status, or good ecological potential for bodies of water designated as artificial or heavily modified. Controls for this purpose may take the form of a requirement for prior authorisation or registration based on general binding rules where such a requirement is not otherwise provided for under Community legislation.

...

10. Measures required to prevent significant losses of pollutants from technical installations and to prevent and/or reduce the impact of accidental pollution incidents, for example, as a result of floods, including through systems to detect or give warning of such events including, in the case of accidents which could not reasonably have been foreseen, all appropriate measures to reduce the risk to aquatic ecosystems.

...'

*The 2013 Act*

41 Under section 33(5)(a)(iii) of the Water Services Act (No 2) 2013 ('the 2013 Act'), Irish Water (which, in 2022, became Uisce Éireann) must, when preparing a water services strategic plan, ensure, as far as practicable, that that plan is consistent with any river basin management plans provided for under regulation 13 of the 2003 Regulations in force.

42 According to section 34(5)(a) and (b) of that act, Irish Water must, when making an investment plan, take account of the water services strategic plan and of any

river basin management plans adopted pursuant to regulation 13 of the 2003 Regulations in force.

*The Abstractions Registration Regulations 2018*

- 43 Regulation 3(1) of the European Union (Water Policy) (Abstractions Registration) Regulations 2018 (S.I. No 261 of 2018) ('the Abstractions Registration Regulations 2018') provides that the EPA is to establish and maintain a register of abstractions of water where 25 or more cubic metres of groundwater or surface water is being abstracted in any 24-hour period.

**Pre-litigation procedure**

- 44 After having received various pieces of legislation transposing Directive 2000/60 in Ireland, the Commission noted a number of issues of concern. As a result, on 23 October 2007, it sent Ireland a letter of formal notice, describing its failure to fulfil its obligations under Articles 2, 3, 5, 7, 9, 10, 11, 14, 23 and 24 of that directive.
- 45 On 25 November 2011, taking the view that the reply to that letter of formal notice did not support the conclusion that Directive 2000/60 had been fully and correctly transposed into domestic law, the Commission sent Ireland a reasoned opinion focusing solely on the 'water services' aspect.
- 46 On 25 January 2019, still unconvinced as to the state of progress of the transposition of that directive into domestic law, the Commission sent Ireland an additional letter of formal notice.
- 47 Following, first, Ireland's reply, in which it undertook to make the necessary amendments in respect of 33 items of concern but disagreed with the Commission on 23 other items raised in the additional letter of formal notice, and, second, the examination of the measures communicated by Ireland, the Commission sent it an additional reasoned opinion on 30 October 2020.
- 48 In that additional reasoned opinion, the Commission listed the 19 measures that Ireland had formally notified to it in connection with the transposition of Directive 2000/60 into national law. The Commission however took the view that, by failing to transpose correctly and fully Article 2(38), Article 4(1)(b)(ii), Article 4(2), Article 4(6)(a), Article 6(6)(b), Article 5(2), Article 7(1) to (3), Article 9(2), Article 11(3)(a) to (e), (g), (i) and (l), Article 11(4) to (8), Article 13(7) and Article 14(1) of, as well as Annexes II to V and Annex VI, part A, to, that directive, Ireland had failed to fulfil its obligations under the said directive, in breach of Article 258 TFEU. It therefore called on Ireland to take the measures necessary to comply with the said opinion within two months of its receipt.

- 49 By a letter of 30 December 2020, Ireland replied to the same additional reasoned opinion, stating that seven additional transposing measures had been formally communicated to the Commission.
- 50 The transposition of Directive 2000/60 was still the subject of discussions between the Commission services and the Irish authorities at a meeting on 26 November 2021.
- 51 By a letter of 17 June 2022, Ireland provided a further update of the transposition of that directive into national law and notified to the Commission the amendments made to four pieces of legislation previously notified as measures transposing the said directive.
- 52 Taking the view that the measures notified to it or of which it had become aware were insufficient to put an end to the alleged failure to fulfil obligations, the Commission decided to bring the present action.

### **The action**

#### ***First complaint: incomplete transposition of Article 2(38) of Directive 2000/60***

##### *Arguments of the parties*

- 53 In its application, the Commission recalls that, in regulation 2(2) of the 2003 Regulations, Ireland chose to transpose the expression ‘water services’ with reference to the definition appearing in Article 2(38) of Directive 2000/60. Regulation 2(2) of the 2003 Regulations states that ‘any word or expression which is used in these Regulations and is also used in th[at d]irective has the same meaning as in the [said d]irective except where these Regulations provide otherwise.’
- 54 The Commission, however, is of the opinion that that form of transposition may lead to a lack of clarity where other legal texts exist, such as, in the present case, the Water Services Act 2007, which defines ‘water services’ without referring to either abstraction or impoundment and excluding from its scope bodies other than those classified as a ‘water services authority’ and which, consequently, does not correspond to the definition set out in Article 2(38) of Directive 2000/60.
- 55 The Commission acknowledges that the amendment made to the 2003 Regulations by the European Union (Water Policy) (Amendment) Regulations 2022 (S.I. No 166 of 2022) (‘the 2022 Regulations’), notified to the Commission on 17 June 2022, which now include a regulation 2(3), which reiterates the definition appearing in Article 2(38) of Directive 2000/60, ‘aligns ... more clearly’ the 2003 Regulations, as amended by the 2022 Regulations, with the provisions of that directive. However, it does not appear that the 2022 Regulations have also amended the Water Services Act 2007. As regards control on water abstraction

and associated impoundment activities, the 2003 Regulations, as amended by the 2022 Regulations, also fail to fill the lacunae of the Water Environment (Abstractions and Associated Impoundments) Act 2022 ('the Abstraction and Impoundment Act 2022'), an act which was not notified to the Commission but which it has nevertheless assessed.

- 56 Although the Commission is of the opinion that Member States are not obliged to ensure cost recovery for all water services, Directive 2000/60 requires them to put in place a system allowing for periodic review of the need to ensure that particular water services contribute to the system by including them in the rules for cost recovery. If those activities are not covered by the definition in Article 2(38) of that directive, however, the Commission considers that review impossible.
- 57 It is therefore of the view that the definition in Article 2(38) of that directive has not been correctly and fully transposed into Irish law, on the one hand, because the Water Services Act 2007 is too limited in scope and, on the other hand, because activities involving the abstraction and impoundment of water are not defined as 'water services' in the Abstraction and Impoundment Act 2022.
- 58 In its defence, Ireland contends that that complaint is unfounded.
- 59 It submits that, initially, regulation 2(2) of the 2003 Regulations – which are the principal measure implementing Directive 2000/60 and which have statutory effect under Section 4 of the European Communities Act 1972 – incorporated the definition in Article 2(38) of that directive by the well-established Irish legislative technique of incorporation by reference. Nevertheless, in order to take account of the Commission's concerns, an express and specific definition of 'water services' was inserted into regulation 2(3) of the 2003 Regulations by the 2022 Regulations, notified to the Commission on 17 June 2022.
- 60 Ireland adds, first, that, contrary to what the Commission claims, the coexistence of that definition with that provided for in the Water Services Act 2007 does not in itself give rise to a lack of clarity, since the scope of application of each of those instruments is clearly defined.
- 61 While Ireland does not dispute that the expression 'water services', defined in the Water Services Act 2007, refers to neither abstraction nor impoundment and does not apply to private water supply schemes, such as group schemes, that is explained by the fact that that act is concerned with the framework for the provision of public drinking water supplies and waste water treatment and infrastructure. Moreover, that definition is not intended to give effect in Irish law to Directive 2000/60 for all uses. By contrast, the definition adopted in the 2003 Regulations applies to all 'water services' for the purposes of that directive, including those falling outside the scope of the Water Services Act 2007, such that there is no lacuna in the transposition of the said directive.
- 62 Second, in terms of the Abstraction and Impoundment Act 2022, Ireland submits that it was not necessary to introduce another definition of 'water services' in that

act, since the definition adopted in the 2003 Regulations, as amended by the 2022 Regulations, applies in any event.

- 63 Third, Ireland emphasises that it is wrong to consider, as the Commission seems to have understood, that the Irish authorities dispute that the definition of ‘water services’ must include abstraction and impoundment. On the contrary, they are indeed included in the definition of those services, which was used in the 2003 Regulations, as amended by the 2022 Regulations. However, the question of whether a Member State has complied with the principle of cost recovery must, in Ireland’s view, be examined by reference to the transposition not of Article 2(38) of Directive 2000/60, but of Article 9 thereof.
- 64 In its reply, the Commission states that none of the arguments put forward by Ireland counters the position that it expressed in its application.
- 65 In particular, it submits that the literal transcription of Article 2(38) of Directive 2000/60 into the 2003 Regulations, as amended by the 2022 Regulations, has no bearing on its initial complaint which concerned not those regulations, but the definition of water services appearing in the Water Services Act 2007. According to the Commission, it is not clear whether or how the activities of water abstraction and impoundment and group water supply schemes, which, under that act, are outside Irish Water’s control, are considered ‘water services’ under Irish law.
- 66 In its rejoinder, Ireland maintains that the coexistence of two definitions of ‘water services’ does not give rise to any confusion, since, unlike the 2003 Regulations, as amended by the 2022 Regulations, the Water Services Act 2007 does not purport to give effect to Directive 2000/60 in Irish law, even if it may contribute to the implementation of it within its field of application.

#### *Findings of the Court*

- 67 According to settled case-law, the question whether a Member State has failed to fulfil its obligations must be determined by reference to the situation prevailing in the Member State at the end of the period laid down in the reasoned opinion, the Court being unable to take account of any subsequent changes (see judgments of 30 November 2006, *Commission v Luxembourg*, C-32/05, EU:C:2006:749, paragraph 22, and of 30 June 2016, *Commission v Poland*, C-648/13, EU:C:2016:490, paragraphs 121, 130 and 152).
- 68 In the case at hand, the end of the period laid down in the additional reasoned opinion having expired on 30 December 2020, the changes in Irish law which occurred after that date cannot therefore be taken into account by the Court in order to assess whether the Commission has provided the elements necessary to establish the existence of the alleged infringement.

- 69 Moreover, it follows from settled case-law that the provisions of a directive must be implemented with unquestionable binding force, and the specificity, precision and clarity necessary to satisfy the requirements of legal certainty (judgments of 23 December 2009, *Commission v Ireland*, C-455/08, EU:C:2009:809, paragraph 38, and of 30 June 2016, *Commission v Poland*, C-648/13, EU:C:2016:490, paragraphs 78 and 119 and the case-law cited).
- 70 By the present complaint, the Commission criticises, in essence, Ireland for allowing, within its legal order, two different definitions of ‘water services’ to coexist, despite the resulting lack of clarity. The first, used by the 2003 Regulations, corresponds, by reference, to the definition provided for in Article 2(38) of Directive 2000/60, while the second, provided for by the Water Services Act 2007, excludes abstraction and impoundment from that definition.
- 71 It should be recalled that, according to Article 2(38)(a) of Directive 2000/60, the expression ‘water services’, within the meaning of that provision, means all services which provide, for households, public institutions or any economic activity, abstraction, impoundment, storage, treatment and distribution of surface water or groundwater.
- 72 As the Court has held, the various activities listed in Article 2(38) of that directive, such as abstraction and impoundment, may have an impact of the state of bodies of water and are therefore liable to undermine the achievement of the objectives pursued by that directive (judgment of 11 September 2014, *Commission v Germany*, C-525/12, EU:C:2014:2202, paragraph 56). Thus, the expression ‘water services’, as it is defined in that provision, is necessary in order to determine, among the services relating to the activities which are listed therein, those which are subject to the principle of cost recovery, set out in Article 9 of Directive 2000/60, a principle which is also one of the instruments available to the Member States for qualitative management of water in order to achieve rational water use. That principle figures among the minimum requirements to be included in the programme of measures to be established by each Member State for each river basin district, in accordance with Article 11 of that directive (see, to that effect, judgment of 11 September 2014, *Commission v Germany*, C-525/12, EU:C:2014:2202, paragraphs 54 and 55).
- 73 From that perspective, it is important that Member States ensure that, when transposing the expression ‘water services’ within the meaning of Article 2(38)(a) of the said directive, those services cover, without the slightest ambiguity, all the activities listed therein.
- 74 Consequently, the coexistence under Irish law of two competing definitions of ‘water services’ does not satisfy the requirement of legal certainty. In particular, such coexistence is liable to create uncertainty as to whether or not services related to the abstraction of surface water or groundwater and to impoundment are covered by the rules on cost recovery, in particular as regards public authorities

and institutions, which appear to be subject to the provisions of both the 2003 Regulations and the Water Services Act 2007.

- 75 In that regard, contrary to what Ireland submits, it matters little that the Water Services Act 2007 is not intended to transpose Directive 2000/60. It appears that that act, which was moreover formally notified by Ireland as a measure transposing that directive, may be regarded as coming under the national measures falling within the scope of that directive, as Ireland has acknowledged in its written submissions.
- 76 Furthermore, if that act were, in the hierarchy of norms in Irish law, to take precedence over the 2003 Regulations, the definition of water services that the same act provides, in so far as it does not include either water abstraction or impoundment, would constitute an inadequate transposition of Article 2(38) of Directive 2000/60.
- 77 It follows that the first complaint, alleging incomplete transposition of Article 2(38) of Directive 2000/60, is well founded.

***Second complaint: incomplete transposition of Article 4(2) of Directive 2000/60***

*Arguments of the parties*

- 78 The Commission submits that, as it recalled during the pre-litigation procedure, Article 4(2) of Directive 2000/60 has not been transposed into Irish law in relation to groundwater and protected areas. Ireland acknowledged that lack of transposition and undertook to amend, accordingly, the 2003 Regulations and the European Communities Environmental Objectives (Groundwater) Regulations 2010 (S.I. No 9 of 2010) ('the 2010 Groundwater Regulations'). However, the Commission states that it has not received any information concerning an amendment to those regulations.
- 79 In its defence and its rejoinder, Ireland submits that its obligations under Article 4 of Directive 2000/60 have been given effect through regulation 12(1)(a) of the 2003 Regulations, according to which the relevant local authorities are to 'establish environmental objectives in relation to each river basin district in accordance with Article 4 of the Directive'. It is thus a clear and precise obligation aimed at ensuring compliance with that article where the relevant authorities make operational the programmes of measures specified in the river basin management plans for surface waters, groundwater and protected areas.
- 80 Ireland adds, however, that regulation 12(1)(a) of the 2003 Regulations was amended by the 2022 Regulations in order to bring it more into line with the specific obligation laid down in Article 4(2) of Directive 2000/60. In addition, Ireland states that it also undertakes to amend, before 31 December 2024, the 2010 Groundwater Regulations and, as regards protected areas, the 2009 Surface

Waters Regulations to make express reference, in those two regulations, to the requirements of Article 4(2) of that directive.

- 81 In its reply, the Commission welcomes the amendments announced by Ireland to its domestic law and that introduced by the 2022 Regulations, but states that it maintains its second complaint since the latter amendment was introduced only after the expiry of the period laid down in the additional reasoned opinion.

*Findings of the Court*

- 82 Article 4 of Directive 2000/60 lays down the environmental objectives which Member States are required to achieve when making operational the programmes of measures specified in the river basin management plans for surface waters, for groundwater and for protected areas.
- 83 As regards groundwater, the environmental objectives that the Member States are required to achieve are specified in Article 4(1)(b) of that directive, which imposes two separate – albeit intrinsically linked – obligations. The first obligation arising from Article 4(1)(b)(i) of Directive 2000/60 is an obligation to prevent the deterioration of the status of all bodies of groundwater, whereas the second obligation, set out in Article 4(1)(b)(ii) and (iii) of that directive, is an obligation to enhance that status (see, to that effect, judgment of 24 June 2021, *Commission v Spain (Deterioration of the Doñana natural area)*, C-559/19, EU:C:2021:512, paragraph 39 and the case-law cited).
- 84 As far as protected areas are concerned, Article 4(1)(c) of Directive 2000/60 provides that ‘Member States shall achieve compliance with any standards and objectives at the latest 15 years after the date of entry into force of this Directive, unless otherwise specified in the Community legislation under which the individual protected areas have been established.’
- 85 According to Article 4(2) of that directive, ‘where more than one of the objectives under paragraph 1 relates to a given body of water, the most stringent shall apply.’
- 86 The Commission complains that Ireland has failed to transpose Article 4(2) of Directive 2000/60 into domestic law as regards groundwater and protected areas.
- 87 In its written submissions, Ireland maintains that its obligations under that Article 4(2) have been given effect through regulation 12(1)(a) of the 2003 Regulations, according to which the relevant local authorities are to ‘establish environmental objectives in relation to each river basin district in accordance with Article 4 of the Directive’.
- 88 First of all, having regard to the subject matter of the second complaint as it is delimited by the application, it is not for the Court to examine whether the generic reference made by the 2003 Regulations to Article 4 of Directive 2000/60 ensures a sufficiently precise transposition of the obligations arising from Article 4(1) of

that directive, as the Commission does not allege any failure on Ireland's part as regards the obligations stemming from that provision.

- 89 Next, having regard to the Irish legislation as it stood at the end of the period laid down in the additional reasoned opinion, namely 30 December 2020, such a generic reference to the obligation, for the relevant national authorities, to 'establish environmental objectives in relation to each river basin district' in no way appears to ensure the implementation of Article 4(2) of the said directive.
- 90 Since Article 4(1) and (2) of Directive 2000/60 introduces a gradation of the objectives that it sets out, there must be a clear and precise provision, in domestic law, which also implements the specific obligation on the relevant national authorities to give priority to the strictest objective where several of those objectives relate to a given body of water, including for groundwater and protected areas referred to, respectively, in points (b) and (c) of that Article 4(1).
- 91 Last, it should be noted that Ireland has not set out the reasons why it believed that Article 4(2) of Directive 2000/60 had to be specifically transposed into domestic law as regards surface waters, the environmental objectives of which are referred to in Article 4(1)(a) of that directive, but not for groundwater and bodies of water in protected areas.
- 92 It follows that the second complaint, alleging incomplete transposition of Article 4(2) of Directive 2000/60, is well founded.

***Third complaint: failure to transpose Article 5(2) of Directive 2000/60***

*Arguments of the parties*

- 93 In its application, the Commission stresses that, during the pre-litigation procedure, it acknowledged that Article 5(2) of Directive 2000/60 had been transposed by regulation 7(6) of the 2003 Regulations. However, it found that that regulation 7(6) had been repealed by regulation 5 of the European Union (Water Policy) Regulations 2014 (S.I. No 350 of 2014). Consequently, it inferred that Article 5(2) of that directive was no longer transposed into Irish law.
- 94 The Commission adds that the Irish authorities acknowledged, during the pre-litigation procedure, that that repeal had taken place inadvertently and that they undertook to re-transpose the said Article 5(2).
- 95 Having received, on 17 June 2022, notification of the 2022 Regulations, it notes that, contrary to what is stated in the correlation table communicated alongside that notification, no national provision appears to transpose Article 5(2) of Directive 2000/60. It therefore considers that Ireland has failed to fulfil its obligation to provide for the review, every six years after their first update, of the analyses and reviews referred to in Article 5(1) of that directive.

96 Ireland acknowledges that regulation 7(6) of the 2003 Regulations was deleted inadvertently. It therefore undertakes to re-transpose Article 5(2) of Directive 2000/60 completely and effectively into Irish law. Ireland states that that transposition will be notified in due course before 31 December 2024.

*Findings of the Court*

97 Article 5(1) of Directive 2000/60 requires Member States to ensure, inter alia, that, for each river basin district, an analysis of its characteristics, a review of the impact of human activity on the status of surface waters and on groundwater and an economic analysis of water use is undertaken according to the technical specifications set out in Annexes II and III to that directive and that they are completed within the period prescribed by that provision.

98 Under Article 5(2) of the said directive, those analyses and reviews must be reviewed and, if necessary, updated at the latest 13 years after the date of entry into force of the same directive and every six years thereafter.

99 By its third complaint, the Commission criticises Ireland for having inadvertently repealed, during the adoption of the European Union (Water Policy) Regulations 2014, the provision of the 2003 Regulations which transposed into Irish law the obligation to review periodically, laid down in Article 5(2) of Directive 2000/60, the analyses and reviews referred to in paragraph 1 of that Article 5.

100 It must be borne in mind that the procedure provided for in Article 258 TFEU presupposes an objective finding that a Member State has failed to fulfil its obligations under the FEU Treaty or secondary legislation (judgment of 25 January 2024, *Commission v Ireland (Trihalomethanes in drinking water)*, C-481/22, EU:C:2024:85, paragraph 90 and the case-law cited).

101 In that regard, it is irrelevant whether the failure to fulfil obligations is the result of intention or negligence on the part of the Member State responsible, or of technical difficulties encountered by it (judgment of 25 January 2024, *Commission v Ireland (Trihalomethanes in drinking water)*, C-481/22, EU:C:2024:85, paragraph 91 and the case-law cited).

102 In the case at hand, Ireland having acknowledged that it inadvertently repealed the provision of the 2003 Regulations implementing the obligation contained in Article 5(2) of Directive 2000/60, without having put an end to the alleged failure to fulfil obligations at the end of the period laid down in the additional reasoned opinion, that situation corresponds to negligence within the meaning of the case-law cited in the preceding paragraph. Accordingly, it must be held that the third complaint is well founded.

***Fourth complaint: incorrect and incomplete transposition of Article 7(3) of Directive 2000/60***

*Arguments of the parties*

- 103 The Commission recalls that, by virtue of Article 7(3) of Directive 2000/60, Member States are to ensure the necessary protection for the bodies of water identified with the aim of avoiding deterioration in their quality in order to reduce the level of purification treatment required in the production of drinking water.
- 104 First, it notes that that provision has not been transposed in relation to groundwater which is currently used as a source of drinking water or which could be used as a source of drinking water. In its view, neither the general prohibition on pollution in the Local Government (Water Pollution) Act, 1977 nor the general obligation to act in a manner that protects water, laid down in the 2003 Regulations, suffices to transpose the specific obligation aimed at protecting groundwater used as drinking water sources against activities which could pollute it.
- 105 Second, as regards surface waters used for drinking water, while point 4 of Schedule 2 to the 2009 Surface Waters Regulations faithfully reproduces the wording of Article 7(3) of Directive 2000/60, the Commission submits that it is not clear from the national provisions either how that requirement is operationalised or which authority is responsible for doing so. Thus, Schedule 1 to those regulations, mentioned by Ireland, does not include, among the relevant public authorities, either Irish Water or any of the organisations responsible for managing drinking water supplies outside of Irish Water's control, such as the National Federation of Group Water Schemes.
- 106 In those circumstances, the Commission considers that there is no legal text in domestic law referring to the requirements of Article 7(3) of Directive 2000/60 in relation to groundwater and point 4 of Schedule 2 to the 2009 Surface Waters Regulations does not apply to the authorities whose main task is to deliver the protection required by Article 7(3). It has therefore not been fully and correctly transposed into Irish law.
- 107 In its defence, Ireland notes that the obligation on Member States under Article 7(3) of Directive 2000/60 is an obligation to ensure the necessary protection for the bodies of water identified for the purposes of Article 7(1) of that directive, rather than an express obligation to take specific legislative measures for that purpose.
- 108 The Commission acknowledges that Ireland adopted in the River Basin Management Plan for Ireland 2018-2021 ('the second river basin management plan'), a copy of which is available on the internet, a comprehensive programme of measures relating to the protection of drinking water sources and that measures

are taken to ensure that the objectives underlying the requirements set out in Article 7(3) of the said directive are pursued.

- 109 That said, in response to the Commission’s concern regarding the transposition of the provisions relating to groundwater, Ireland indicates that it has undertaken to amend the 2010 Groundwater Regulations so that the high level of protection and quality standards currently in place for surface waters is equally applied to groundwater.
- 110 As for the Commission’s concerns regarding the allocation of responsibilities among public authorities for compliance with Article 7(3) of Directive 2000/60, Ireland refers to the European Union (Drinking Water) Regulations 2023 (S.I. No 99 of 2023) (‘the 2023 Regulations’), the principal regulations transposing Directive (EU) 2020/2184 of the European Parliament and of the Council of 16 December 2020 on the quality of water intended for human consumption (OJ 2020 L 435, p. 1). In particular, regulation 10 of those regulations, read in conjunction with Schedule 6 thereto, identifies the roles and responsibilities of the relevant public authorities in the context of the protection of drinking water sources. In Ireland’s view, those regulations serve to address the concerns raised by the Commission for the purpose of transposing Article 7(3) of Directive 2000/60.
- 111 In its reply, the Commission states that, contrary to what Ireland claims, the requirement laid down in Article 7(3) of that directive must be ‘anchored’ in domestic law and that the obligation to take action needs to be allocated to one or more identifiable State actors. The actions being taken under the second river basin management plan, however, are not anchored in any precise legal framework.
- 112 In terms of Ireland’s line of argument concerning the 2023 Regulations, the Commission observes, first of all, that those regulations did not come into effect until 10 March 2023, that is to say, after the expiry of the period laid down in the additional reasoned opinion. Next, the said regulations still do not seem to include private water suppliers. Last, they do not fill the transposition lacuna of Article 7(3) of Directive 2000/60 concerning groundwater, since they refer only to surface waters.
- 113 While maintaining that it has correctly and fully transposed Article 7(3) of Directive 2000/60 into domestic law, Ireland explains, in its rejoinder, that the 2023 Regulations apply to ‘water suppliers’, in particular Irish Water and private water suppliers, and that, as part of the implementation of those regulations, the technical guidelines on the protection of drinking water sources published in July 2024 indicate that the safeguard zones apply both to surface water and to groundwater abstractions. In any event, the amendment to the 2010 Groundwater Regulations will have to be completed and notified to the Commission before 31 December 2024.

*Findings of the Court*

- 114 As a preliminary point, it should be recalled that, in accordance with the case-law mentioned in paragraph 67 of the present judgment, the question whether a Member State has failed to fulfil obligations must be determined by reference to the situation prevailing in the Member State at the end of the period laid down in the reasoned opinion, such that the Court cannot take account of the changes in Irish law after the expiry of the period laid down in the additional reasoned opinion, namely after 30 December 2020.
- 115 It is however necessary to examine, in the first place, the alleged failure to transpose Article 7(3) of Directive 2000/60 in relation to groundwater and, in the second place, the alleged incomplete transposition of that provision as regards surface water.
- 116 Regarding the first point, it should be recalled that Article 7 of that directive, entitled ‘Waters used for the abstraction of drinking water’, provides, in paragraph 1 thereof, that Member States are to identify, within each river basin district, all bodies of water used for the abstraction of water intended for human consumption providing more than 10 m<sup>3</sup> a day as an average or serving more than 50 persons and those bodies of water intended for such future use.
- 117 Pursuant to Article 7(3) of the said directive, Member States, first, must ensure the necessary protection for the bodies of water identified with the aim of avoiding deterioration in their quality in order to reduce the level of purification treatment required in the production of drinking water and, second, may establish safeguard zones for those bodies of water.
- 118 That provision lays down a precise obligation as to the result to be achieved consisting in reducing, for all the bodies of water identified, the level of treatment required in the production of drinking water in order to avoid deterioration in their quality. In addition, that provision requires Member States to assess, to that end, the need to establish safeguard zones for those bodies of water.
- 119 It follows, on the one hand, as the Commission has argued and without being challenged on that point by Ireland, that the requirements provided for in Article 7(3) of Directive 2000/60 apply not only to bodies of surface water, but also to bodies of groundwater intended for human consumption which satisfy the conditions laid down in Article 7(1) of that directive.
- 120 On the other hand, while it is true that Article 7(3) of the said directive leaves the Member States a margin of discretion in the choice of the measures which they consider most appropriate for the attainment of that objective and that, as Ireland submits, full compliance with that provision requires that Member States actually put in place measures for the protection of the bodies of water identified, such as those indicated in the second river basin management plan, that does not mean that those Member States are exempted from enshrining the obligation to take such measures in a provision of domestic law with unquestionable binding force.

In that regard, as the Commission submits, the mere prohibition of pollution and the obligation imposed on the relevant national authorities to act in a manner that protects water, laid down by the national legislation, are manifestly insufficient to transpose the precise obligation, laid down in that Article 7(3), to avoid deterioration in the quality of groundwater intended for human consumption. Moreover, Ireland has not set out the reasons why it considered that such an obligation to transpose applied to bodies of surface water and not to bodies of groundwater.

- 121 The fourth complaint must therefore be deemed well founded in so far as it relates to the failure to transpose Article 7(3) of Directive 2000/60 as regards bodies of groundwater.
- 122 As for the second point referred to in paragraph 115 of the present judgment, the Commission criticises Ireland for the incomplete transposition of that Article 7(3) in so far as the competent authorities designated in the 2009 Surface Waters Regulations as being responsible, inter alia, for the protection measures referred to in the said Article 7(3) in respect of bodies of surface water include neither Irish Water nor other Irish drinking water suppliers, such as those of the National Federation of Group Water Schemes.
- 123 In that regard, it is common ground that it follows from a combined reading of regulations 4 and 6 of, and point 4 of Schedule 2 to, the 2009 Surface Waters Regulations that the measures to be taken by the public authorities to achieve the environmental objectives laid down by those regulations include those set out in Article 7 of Directive 2000/60, in particular measures to safeguard water quality in order to reduce the level of purification treatment required for the production of drinking water. In accordance with regulation 3 of the said regulations, the ‘public authorities’ to which those regulations apply are to be understood as ‘an authority or State Sponsored Body’ listed in Schedule 1 thereto. As the Commission has pointed out, however, that schedule does not mention Irish Water, although it is not disputed that, since its creation in 2013, that national company has been the main operator of drinking water distribution in Ireland.
- 124 Moreover, while it is true that Part II of the 2009 Surface Waters Regulations, which includes the aforementioned regulations 4 and 6 thereof, is entitled ‘Duties on public authorities and other persons’, it in no way appears – nor has Ireland claimed – that the expression ‘other persons’ ultimately refers not only to Irish Water, but also to the other Irish drinking water suppliers. It is also important to point out that Ireland has also failed to indicate which provision of national law ensured that all operators responsible for the supply of drinking water in that Member State comply with the requirements for the protection of drinking water sources, as are provided for in Article 7(3) of Directive 2000/60.
- 125 Consequently, the second point of the fourth complaint must also be held to be well founded.

126 It follows that the fourth complaint, alleging an incorrect and incomplete transposition of Article 7(3) of Directive 2000/60, is well founded.

***Fifth complaint: incomplete transposition of Article 9(2) of Directive 2000/60***

*Arguments of the parties*

127 The Commission recalls that, according to Article 9(2) of Directive 2000/60, Member States are to report, in the river basin management plans, on the planned steps towards implementing Article 9(1) of that directive which will contribute to achieving the environmental objectives of that directive and on the contribution made by the various water uses to the recovery of the costs of water services.

128 The Commission indicates that, during the pre-litigation procedure, it expressed doubts as to Ireland's claim that that Article 9 is correctly transposed by regulation 13 of the 2003 Regulations.

129 In its application, it submits that, in order to ensure the effectiveness of the obligation laid down in Article 9(2) of Directive 2000/60, the national transposing law must set out clearly and in detail the different aspects of the analysis that will allow the authorities in a Member State to adequately consider how to contribute to achieving the environmental objectives of that directive and in what way the various water uses contribute to the recovery of the costs of water services. As is clear from the second indent of the second subparagraph of Article 9(1) of Directive 2000/60, that means ensuring that the necessary measures are taken to allow the required report to be disaggregated into at least water users from the industry, households and agriculture sectors. The mere cross-reference in regulation 13 of the 2003 Regulations does not suffice to ensure the full transposition of Article 9(2) of that directive. Furthermore, the Commission takes the view that neither Section 31(2) of the Water Services Act 2007 nor Section 33(5) and Section 34(5) of the 2013 Act, which it examined during the pre-litigation procedure, impose a clear obligation to report, in the river basin management plans, inter alia, on the contribution of the various sectors to the recovery of the costs of water services.

130 In addition, the second river basin management plan, in particular section 9 thereof, referred to by the Irish authorities during the pre-litigation procedure, reflects the need to adopt more detailed transposition measures, making it possible to ascertain how the national water pricing policy encourages users, whether domestic, industrial or agricultural, to use water resources efficiently. Thus, the Commission considers that the national authorities which draw up the river basin management plans must be required to communicate the specific elements of cost recovery set out in Article 9(1) of Directive 2000/60 in order to be in a position to report, in accordance with Article 9(2) thereof, on the steps taken.

131 Ireland recalls that the appropriate means of giving effect to the obligation under Article 9(2) of Directive 2000/60 was to proceed, in national legislation, by

reference to the provisions of EU law. That is why regulation 13 of the 2003 Regulations provides that the relevant national authorities are under the obligation to ‘make a river basin management plan in accordance with Article 13 of [that d]irective’, which requires that that plan include the information detailed in Annex VII to the said directive, which, in turn, refers to the steps taken in accordance with Article 9 of the same directive.

- 132 Ireland observes that the effectiveness of that method of transposition in practice is reflected in the second river basin management plan, which did undertake an economic analysis of water use in line with Article 9(2) of Directive 2000/60. The third river basin management plan, published in 2024, contains particularly detailed provisions in respect of the economic cost of water services.
- 133 Ireland adds that, after the adoption of the 2003 Regulations, Section 31(2) of the Water Services Act 2007 and Section 33(5) and Section 34(5) of the 2013 Act gave further effect in domestic law to the obligations referred to in Article 9 of Directive 2000/60. Moreover, the wording of Article 9 of that directive is not as clear and precise as the Commission suggests and Member States must be afforded discretion in how they give effect to those obligations in their national law.
- 134 Ireland observes that, by the 2022 Regulations, it amended regulation 7(2) of the 2003 Regulations to insert an express reference to ‘an economic analysis of water use in accordance with the Eighth Schedule’, which, entitled ‘Economic Analysis’, reproduces Annex III to Directive 2000/60. In addition, Ireland states that it will amend that eighth schedule before 31 December 2024, so that the report, contained in the river basin management plan and referred to in Article 9(2) of that directive, includes an examination of the contribution of the various economic sectors to the recovery of the costs of water services, as is required by the second subparagraph of Article 9(1) of the said directive.

#### *Findings of the Court*

- 135 The first subparagraph of Article 9(1) of Directive 2000/60 provides that Member States must take account of the principle of recovery of the costs of water services, including environmental and resource costs, having regard to the economic analysis conducted according to Annex III to that directive, and in accordance in particular with the polluter pays principle.
- 136 That provision seeks the establishment, by Member States, of a general policy of recovery of costs in the light, in particular, of the polluter pays principle (judgment of 7 November 2019, *UNESA and Others*, C-105/18 to C-113/18, EU:C:2019:935, paragraph 33).
- 137 More specifically, it is apparent from the second subparagraph of Article 9(1) of Directive 2000/60 that Member States had to ensure, by 2010 at the latest, that, first, water-pricing policies provided adequate incentives for users to use water

resources efficiently, and thereby contribute to the environmental objectives of that directive and, second, an adequate contribution of the different water uses, disaggregated into at least industry, households and agriculture, to the recovery of the costs of water services, based on the economic analysis conducted according to Annex III to that directive and taking account of the polluter pays principle.

- 138 To that end, Article 9(2) of Directive 2000/60 requires Member States to report, in the river basin management plans prepared under Article 13 of that directive, first, on the steps taken to implement paragraph 1 of that Article 9, which will contribute to achieving the environmental objectives of the said directive, and, second, on the contribution made by the various water uses to the recovery of the costs of water services.
- 139 Article 9(2) of the same directive thus requires Member States to provide, in their domestic law, for the river basin management plans to contain a report analysing the manner in which the national measures which govern water services, including those relating to water pricing, take account of the principle of recovery of costs. That report must also identify how the various economic sectors of the Member State concerned contribute to the realisation of that principle, which means that that report must distinguish, at the very least, the contribution of users in the industrial sector, the households sector and the agricultural sector.
- 140 In that regard, as the Commission has maintained, the method of transposition of Article 9(2) of Directive 2000/60 applied by Ireland leads to an incomplete and insufficiently clear and precise implementation of the requirements laid down in that Article 9(2).
- 141 Contrary to what Ireland claims with regard to the adequacy and sufficiency of such a method of transposition, the fact that regulation 13 of the 2003 Regulations requires the relevant national authorities to ‘make a river basin management plan in accordance with Article 13 of ... Directive [2000/60]’, which in turn requires, in paragraph 4 thereof, that that plan include the information detailed in Annex VII to that directive, which includes, in accordance with point 7.2 of part A of that Annex VII, ‘a report on the practical steps and measures taken to apply the principle of recovery of the costs of water use in accordance with Article 9 [of the said directive]’, leads at most to the conclusion that regulation 13 of the 2003 Regulations transposed, as is apparent from its wording, Article 13 of Directive 2000/60 and the requirement to prepare the report, a report which must be included in the river basin management plan and which is referred to in Article 9(2) of that directive.
- 142 By contrast, the method of transposition by ‘triple reference’ applied by Ireland does not make it possible to determine the elements which must necessarily be covered by that report, as are mentioned in paragraph 139 of the present judgment.
- 143 Moreover, if that method of transposition were to be deemed sufficient to transpose Article 9(2) of Directive 2000/60, regulation 13 of the 2003 Regulations

would then have to be regarded as ensuring the implementation of all the provisions of and annexes to that directive referred to in Annex VII thereto, namely almost all of the said provisions and annexes. However, apart from the fact that Ireland has clearly not claimed that such a wide scope ought to be extended to regulation 13 of the 2003 Regulations, such a line of argument would run counter to the settled case-law of the Court, recalled in paragraph 69 of the present judgment, according to which the provisions of a directive must be implemented with unquestionable binding force and with the specificity, precision and clarity necessary to satisfy the requirement of legal certainty.

- 144 Nor can the Court accept Ireland’s argument that Section 31(2) of the Water Services Act 2007 and Section 33(5) and Section 34(5) of the 2013 Act gave further effect, in domestic law, to the obligations referred to in Article 9 of Directive 2000/60. On the one hand, it is common ground that Section 31(2)(k) of the Water Services Act 2007 merely requires that the water services authorities take account of any river basin management plan or programme of measures in the exercise of their functions. On the other hand, the abovementioned provisions of the 2013 Act seek only to require Irish Water to adopt measures – in this case a strategic plan and an investment plan for water services – which take account of any river basin management plan adopted under regulation 13 of the 2003 Regulations. Thus, that set of provisions manifestly fails to implement Article 9(2) of Directive 2000/60 as regards the elements which must be analysed in the river basin management plan.
- 145 In addition, it is necessary to reject Ireland’s claim that the second and third river basin management plans in fact include an examination of the elements required by Article 9(2) of Directive 2000/60 and therefore ensure the full application of that provision.
- 146 First, it must be recalled that, according to settled case-law, mere administrative practices, which by their nature are alterable at will by the authorities and are not given the appropriate publicity, cannot be regarded as constituting the proper fulfilment of obligations to transpose a directive (judgment of 30 June 2016, *Commission v Poland*, C-648/13, EU:C:2016:490, paragraph 79 and the case-law cited).
- 147 Second, as regards the second river basin management plan – the only plan which was applicable at the end of the period laid down in the additional reasoned opinion, as the Commission maintains in its written pleadings – it is in no way apparent from section 9 of that plan, entitled ‘Economic Analysis of Water Use’, that it includes an assessment of water pricing policy which explains, moreover, how that policy encourages users to make efficient use of water resources. Furthermore, as the Commission has argued, apart from summary information on the level of water consumption and demand in the various sectors referred to in Article 9(2) of Directive 2000/60, section 9 of that plan does not examine the contribution of the industrial and agricultural sectors to the recovery of the costs of water services, the Irish agricultural sector moreover appearing to be excluded

from the analysis to be undertaken pursuant to that Article 9(2), despite the high level of abstractions carried out in that sector, in particular from groundwater bodies, as is acknowledged in the river basin management plan.

- 148 It follows that the fifth complaint, alleging incomplete transposition of Article 9(2) of Directive 2000/60, is well founded.

***Sixth to ninth complaints: failure to transpose Article 11(3)(a) to (d) of Directive 2000/60 in relation to groundwater***

*Arguments of the parties*

- 149 The Commission recalls that, under Article 11(3) of Directive 2000/60, the ‘basic measures’ of the programmes of measures for each river basin district are the minimum requirements to be complied with and consist of seven types of measures, the first four of which are set out in points (a) to (d) of that provision. Those include (i) ‘those measures required to implement Community legislation for the protection of water, including measures required under the legislation specified in Article 10 and in part A of Annex VI [to that directive]’, (ii) ‘measures deemed appropriate for the purposes of Article 9 [thereof]’, (iii) ‘measures to promote an efficient and sustainable water use in order to avoid compromising the achievement of the objectives specified in Article 4 [of the said directive]’, and (iv) ‘measures to meet the requirements of Article 7 [of the same directive], including measures to safeguard water quality in order to reduce the level of purification treatment required for the production of drinking water’.
- 150 The Commission emphasises that, although it considered that regulation 6 of the 2009 Surface Waters Regulations and points 1 to 4 of Schedule 4 to those regulations sufficiently transposed those provisions of Article 11(3) of Directive 2000/60 as regards surface water, no specific transposition relating to groundwater was notified by Ireland.
- 151 The Commission notes that the Irish authorities did notify the 2022 Regulations, amending the 2003 Regulations, on 17 June 2022. In its view, however, that amendment does not establish a legal framework within which the authorities which draw up programmes of measures are provided with the guidance necessary to ensure compliance, especially since Ireland has not transposed or has not sufficiently transposed Article 7(3) and Article 9(2) of Directive 2000/60.
- 152 In its defence, Ireland recalls that it transposed Article 11(3) of Directive 2000/60 by means of regulation 12(2) of the 2003 Regulations, according to which any programme of measures was to include the basic measures specified in Article 11(3) of that directive and such supplementary measures specified in Article 11(3) thereof as the competent authorities considered appropriate. Regulation 12(2) of the 2003 Regulations was supplemented by regulation 3(1)(a) and (b) of those regulations, which imposed a duty on every public authority to exercise its functions in a manner consistent with the provisions of the said

directive and which achieves and promotes compliance with the requirements of the same directive, while taking appropriate measures to secure compliance with it. Those provisions therefore transpose in an effective manner the obligations listed in Article 11(3)(a) to (d) of that directive.

- 153 Ireland adds that the amendment to regulation 12(2) of the 2003 Regulations, introduced by the 2022 Regulations, has given further effect to Article 11(3) of Directive 2000/60. Thus, that amendment states that a programme of measures is to include (i) the basic measures specified in that Article 11(3), (ii) such supplementary measures specified in Article 11(4) of that directive as the relevant authorities consider appropriate, and (iii) the legislation referred to in Article 10 of, and Annex VI to, the said directive. Contrary to what the Commission contends, Article 11(3)(a) to (d) of Directive 2000/60 does not impose more detailed requirements in respect of its implementation at national level. The national measures are therefore sufficient to ensure the transposition of Article 11(3)(a) to (d) in relation to groundwater.
- 154 Nevertheless, in accordance with the obligation of sincere cooperation and for the avoidance of any doubts as to the completeness of the transposition of that provision, Ireland states that it will amend the 2003 Regulations and the 2010 Groundwater Regulations so as to transpose that provision verbatim.
- 155 In its reply, the Commission observes that, contrary to what Ireland claims, the transposition of Article 11(3)(a) to (d) of Directive 2000/60 should establish a clear legal framework within which the relevant national authorities drawing up the programmes of measures are provided with the necessary guidance to ensure compliance, which, as matters stand, neither the 2003 Regulations nor the 2010 Groundwater Regulations ensure.
- 156 In its rejoinder, Ireland considers that there is already a ‘clear legal framework’ in Irish law and recalls that the transposition of a directive does not necessarily require that its provisions be incorporated formally and verbatim in express, specific legislation. Nevertheless, it emphasises that the amendment of the 2003 Regulations and of the 2010 Groundwater Regulations, announced in its defence, will have to be made and notified to the Commission before 31 December 2024.

*Findings of the Court*

- 157 By its sixth to ninth complaints, the Commission complains that Ireland has not specifically transposed Article 11(3)(a) to (d) of Directive 2000/60 in relation to groundwater.
- 158 Article 11(1) of Directive 2000/60 requires each Member State to ensure the establishment, for each river basin district or for the part of an international river basin district within its territory, of a programme of measures in order to achieve the environmental objectives established under Article 4 of that directive. Paragraph 2 of that Article 11 states that ‘each programme of measures shall

include the “basic” measures specified in paragraph 3 and, where necessary, “supplementary” measures.’

- 159 Pursuant to Article 11(3) of Directive 2000/60, the ‘basic measures’ of the programmes of measures for each river basin district are the minimum requirements to be complied with and consist of, inter alia, ‘those measures required to implement Community legislation for the protection of water, including measures required under the legislation specified in Article 10 and in part A of Annex VI [to that directive]’, ‘measures deemed appropriate for the purposes of Article 9 [thereof]’, ‘measures to promote an efficient and sustainable water use in order to avoid compromising the achievement of the objectives specified in Article 4 [of the said directive]’ and ‘measures to meet the requirements of Article 7 [thereof], including measures to safeguard water quality in order to reduce the level of purification treatment required for the production of drinking water’.
- 160 Regarding the transposition of those provisions into Irish law on the expiry of the period laid down in the additional reasoned opinion, namely 30 December 2020, it should be noted that Ireland does not dispute that such transposition had to be carried out not only for bodies of surface water, but also for groundwater. That Member State nevertheless submits that, on the expiry of that period, regulation 12(2) of the 2003 Regulations, supplemented by regulation 3(1)(a) and (b) of those regulations, ensured adequate transposition of those provisions for groundwater.
- 161 In that regard, it is important to point out that, whereas regulation 3(1)(a) and (b) of the 2003 Regulations places every public authority under a duty to exercise its functions in a manner which is consistent with the provisions of Directive 2000/60 and which achieves and promotes compliance with the requirements of it, while taking appropriate measures to ensure compliance with it, regulation 12(2) of those regulations merely states that ‘a programme of measures shall include the basic measures specified in Article 11(3) of ... Directive [2000/60] and such supplementary measures specified in Article 11(4) of ... Directive [2000/60] as the relevant authorities consider appropriate.’
- 162 While it is true, as Ireland points out, that, according to the case-law of the Court, transposing a directive into domestic law does not necessarily require its provisions to be reproduced verbatim in a specific, express law or regulation; a general legal context may be sufficient, provided that that general legal context does effectively ensure the full application of the directive in a sufficiently clear and precise manner (see, to that effect, judgment of 30 June 2016, *Commission v Poland*, C-648/13, EU:C:2016:490, paragraph 73 and the case-law cited).
- 163 That is not the case, however, with regulation 12(2) of the 2003 Regulations, which merely states that a programme of measures is to include the ‘basic measures’ listed in Article 11(3) of Directive 2000/60 and which therefore, at

most, implements not that paragraph 3 of that Article 11, but only paragraph 2 thereof.

- 164 The incomplete nature of the implementation in domestic law of the provisions of Article 11(3) of Directive 2000/60 in relation to groundwater is all the more apparent as regards, first, the ‘basic measures’ referred to in Article 11(3)(b) of that directive, which are to be understood as ‘measures deemed appropriate for the purposes of Article 9 [thereof]’, and, second, those referred to in Article 11(3)(d) of the said directive, namely the ‘measures to meet the requirements of Article 7 [thereof]’, that, as has been held in paragraphs 126 and 148 of the present judgment respectively, the Commission’s complaints alleging insufficient or incomplete transposition of Article 7(3) and Article 9(2) of the same directive are well founded.
- 165 Furthermore, Ireland has not set out the reasons why it considered that, at the end of the period laid down in the additional reasoned opinion, the specific obligation to transpose Article 11(3)(a) to (d) of Directive 2000/60 applied to bodies of surface water but not to bodies of groundwater.
- 166 Accordingly, the sixth to ninth complaints, alleging failure to transpose Article 11(3)(a) to (d) of Directive 2000/60 in relation to groundwater, are well founded.

***Tenth complaint: incorrect transposition of Article 11(3)(e) of Directive 2000/60***

*Arguments of the parties*

- 167 In its application, the Commission states that the ‘basic measures’ provided for in Article 11(3) of Directive 2000/60 must also include, under point (e) of that provision, controls over the abstraction of fresh surface water and groundwater, and impoundment of fresh surface water.
- 168 It notes that neither the provisions of the 2003 Regulations nor those of the 2009 Surface Waters Regulations sufficiently transpose that obligation.
- 169 Thus, as regards the latter regulations, the Commission observes that they do not apply to groundwater. It is, moreover, ineffective since the Irish authorities do not currently have powers to control abstraction of surface waters, nor do there appear to be powers in Irish law to control the impoundment of those waters.
- 170 In addition, the Commission submits that, as it already indicated in the additional reasoned opinion, the Abstractions Registration Regulations 2018 provide for an excessively high threshold for the registration of surface water and groundwater abstraction of 25 m<sup>3</sup> per day. Article 7(1) of Directive 2000/60 requires Member States inter alia to identify all bodies of water used for the abstraction of water intended for human consumption providing more than 10 m<sup>3</sup> per day as an average.

- 171 In addition, it observes that, during the pre-litigation procedure, while disputing the failure to fulfil obligations, Ireland acknowledged that the national legislation did not adequately meet the requirements of Article 11(3)(e) of that directive and that that Member State was therefore considering adopting a legislative framework introducing a new system of control over the abstraction of surface water and groundwater and provisions on impoundment associated with abstraction activities.
- 172 Although no legislation to that effect had been notified to the Commission, that institution states that it became aware of the adoption, on 20 December 2022, of the Abstraction and Impoundment Act 2022, which would create a framework for the control of water abstraction and associated impoundments, by allocating to the EPA a key role as regulator of those new powers. However, that act does not seem to have entered into force and its application would depend on the adoption of a number of implementing regulations and EPA guidelines.
- 173 The Commission concludes that Ireland has failed correctly to transpose Article 11(3)(e) of Directive 2000/60, either for abstraction or for associated impoundments.
- 174 Ireland maintains that that complaint is unfounded.
- 175 First, it recalls that Article 11(3) of Directive 2000/60 was transposed by regulation 12(2) of the 2003 Regulations, as supplemented by Regulation 3(1)(a) and (b) thereof.
- 176 Second, Ireland points out that point 5 of Schedule 2 to the 2009 Surface Waters Regulations, read in conjunction with regulation 6 thereof, refers expressly to the requirements of Article 11(3)(e) of Directive 2000/60.
- 177 Third, it observes that the 2018 Abstractions Registration Regulations made provision for the control of abstraction of surface water and groundwater through the establishment of a register of abstractions of water of more than 25 m<sup>3</sup> per day, to be created and maintained by the EPA. In that regard, Ireland refutes the relevance of the threshold of 10 m<sup>3</sup> per day provided for in Article 7(1) of that directive as alleged by the Commission. That threshold relates to the identification of bodies of water and not to their registration, as is set out in Article 11(3)(e) of the said directive.
- 178 Fourth, Ireland submits that the Abstraction and Impoundment Act 2022, mentioned by the Commission in its application, which entered into force on 28 August 2024, and its implementing regulations which entered into force on 30 August 2024 and which were all notified to the Commission in September 2024, put beyond any doubt that there has been a complete and effective transposition of Article 11(3)(e) of Directive 2000/60 into Irish law.

*Findings of the Court*

- 179 According to Article 11(3)(e) of Directive 2000/60, the ‘basic measures’ of the programme of measures that Member States must adopt for each river basin district include ‘controls over the abstraction of fresh surface water and groundwater, and impoundment of fresh surface water, including a register or registers of water abstractions and a requirement of prior authorisation for abstraction and impoundment. These controls shall be periodically reviewed and, where necessary, updated. Member States can exempt from these controls, abstractions or impoundments which have no significant impact on water status’.
- 180 By the present complaint, the Commission claims that neither the provisions of the 2003 Regulations nor those of the 2009 Surface Waters Regulations sufficiently transpose that obligation. It also submits that the 2018 Abstractions Registration Regulations provides for an excessively high threshold for the registration of surface water and groundwater abstraction of 25 m<sup>3</sup> per day, whereas it follows from Article 7(1) of Directive 2000/60 that Member States must identify all bodies of water used for the abstraction of water intended for human consumption providing on average more than 10 m<sup>3</sup> per day.
- 181 In that regard, it is true, as Ireland essentially contends, that, contrary to Article 11(3)(d) of Directive 2000/60, Article 11(3)(e) thereof refers neither to Article 7 of that directive nor, in particular, to the threshold of 10 m<sup>3</sup> per day fixed in paragraph 1 of that Article 7, applicable to the identification of the bodies of water used for the abstraction of water intended for human consumption.
- 182 However, that finding does not mean, as the Commission maintains, that the minimum threshold of 25 m<sup>3</sup> per day provided for by the 2018 Abstractions Registration Regulations, for both surface water and groundwater abstraction, is not excessively high.
- 183 Indeed, as follows from Article 11(3)(e) of Directive 2000/60, Member States are authorised to exempt from the controls provided for in that provision only abstractions or impoundments which have no significant impact on water status. It in no way appears – nor has it been argued by Ireland – that a surface water and groundwater abstraction threshold of less than 25 m<sup>3</sup> could ever and in any way have a significant effect on the status of those waters.
- 184 Consequently, it must be held that the 2018 Abstractions Registration Regulations incorrectly transpose Article 11(3)(e) of Directive 2000/60.
- 185 As to the remainder, suffice it to point out that, in the light of the situation existing at the end of the period laid down in the additional reasoned opinion, neither regulation 12(2) of the 2003 Regulations, as supplemented by regulation 3(1)(a) and (b) thereof, nor regulation 6 of, and point 5 of Schedule 5 to, the 2009 Surface Waters Regulations make it possible, by reason of their insufficiently specific and precise nature, to fill the lacunae in the transposition of Article 11(3)(e) of Directive 2000/60 set out in paragraph 183 of the present judgment.

186 It follows that the tenth complaint, alleging incorrect transposition of Article 11(3)(e) of Directive 2000/60, is well founded.

***Eleventh complaint: incomplete transposition of Article 11(3)(i) of Directive 2000/60***

*Arguments of the parties*

- 187 The Commission points out that, under Article 11(3)(i) of Directive 2000/60, ‘basic measures’ must include the monitoring of the hydromorphological status not only of surface water but also of groundwater, which may take the form of a requirement for prior authorisation or registration based on binding rules subject to periodic review.
- 188 Having examined, during the pre-litigation phase, both the provisions of the 2003 Regulations and those of the 2009 Surface Waters Regulations notified by Ireland as measures transposing Directive 2000/60, as well as the provisions of the Arterial Drainage Act, 1945, which is the main legal instrument establishing a system for controlling activities having a hydromorphological impact but which has not been amended to bring it into line with the objectives of that directive, the Commission takes the view that the measures referred to by Ireland provide for a cursory and piecemeal framework for monitoring the hydromorphological status of water bodies. According to that institution, those measures do not therefore amount to a system of prior authorisation or registration based on general binding rules subject to periodic review and are not targeted to deliver the protection required by the said directive.
- 189 The Commission adds that a regulatory framework should be designed to assess the risks to the hydromorphological status of water bodies, what environmental standards should apply and under which conditions any activities having an impact on hydromorphology should be carried out, activities such as navigation, flood protection, drinking water supply, power generation, irrigation or urbanisation. That framework should also identify which authority is responsible for conducting that process. It is not apparent from the information provided by the Irish authorities, however, that such a system exists in Ireland.
- 190 The Commission therefore asks the Court to declare that Ireland has failed to fulfil its obligation to transpose correctly and fully Article 11(3)(i) of Directive 2000/60.
- 191 In its defence, Ireland recalls that Article 11(3) of Directive 2000/60 was transposed into domestic law by regulation 12(2) of the 2003 Regulations, supplemented by regulation 3(1)(a) and (b) thereof. Those provisions, in relation to surface waters, are reinforced by regulation 6 of, and point 8 of Schedule 2 to, the 2009 Surface Waters Regulations.

- 192 Furthermore, Ireland submits that, contrary to what the Commission maintains, the hydromorphological measures referred to in Article 11(3)(i) of that directive apply not to groundwater, but only to bodies of surface water.
- 193 In addition, in the light of the wording of that Article 11(3)(i), there is no specific obligation, contrary to what the Commission suggests, requiring that the controls referred to in that provision take the form of prior authorisation and registration.
- 194 In its reply, the Commission claims that, while it is correct that hydromorphology is an element of assessment for the sole purpose of assessing surface water status, measures which control hydromorphology can and do have indirect effects on groundwater status, as Annex V to Directive 2000/60 confirms. Any controls in relation to hydromorphological interventions must therefore examine not only impacts on surface water status, but also effects on groundwater status. The Commission acknowledges, however, that correct transposition of Article 11(3)(i) of that directive could be achieved through measures focusing on surface waters alone, provided that the indirect potential impacts on groundwaters are specifically taken into consideration.
- 195 Furthermore, as regards the question of the requirement of prior authorisation or registration, the Commission acknowledges that a Member State can choose how it complies with that requirement, but considers that a control regime must be put in place. In its view, there is no regime in Ireland for controlling changes to the hydromorphology of watercourses in a manner that is consistent with Directive 2000/60. Ireland has therefore not transposed in an operational manner the requirements of Article 11(3)(i) of that directive.
- 196 In its rejoinder, Ireland states that it does not agree with the Commission's contention that the correct transposition of Article 11(3)(i) of Directive 2000/60 requires that, in any such measures focusing on surface waters, the indirect potential impacts on groundwaters be specifically taken into consideration. According to Ireland, it is not apparent from the wording of that provision that it imposes a detailed and highly prescriptive requirement. In any event, those impacts are indeed taken into consideration in the third river basin management plan, published in 2024, which notes the connection to groundwaters as part of the hydromorphological regime for rivers and lakes. In addition, the Irish authorities are continuing to strengthen the system of hydromorphological controls, in particular through planning authorisations and the possible adoption of a dedicated hydromorphology act.

*Findings of the Court*

- 197 The present complaint consists of two parts.
- 198 By the first part, the Commission submits, in essence, that, although regulation 6 of, and point 8 of Schedule 2 to, the 2009 Surface Waters Regulations formally reiterate the obligation to carry out controls by specifying that they may take the

form of a requirement for prior authorisation or registration of the hydromorphological conditions of bodies of surface water, as is required by Article 11(3)(i) of Directive 2000/60, it is not, however, apparent from the national legislative and regulatory framework that Ireland has introduced a system of prior authorisation or registration based on general binding rules.

- 199 In that regard, it is worth recalling that, by virtue of Article 11(3)(i) of Directive 2000/60, ‘basic measures’ are to include, ‘for any other significant adverse impacts on the status of water identified under Article 5 [thereof] and Annex II [thereto], in particular measures to ensure that the hydromorphological conditions of the bodies of water are consistent with the achievement of the required ecological status or good ecological potential for bodies of water designated as artificial or heavily modified. Controls for this purpose may take the form of a requirement for prior authorisation or registration based on general binding rules where such a requirement is not otherwise provided for under Community legislation. Such controls shall be periodically reviewed and, where necessary, updated’.
- 200 It is thus apparent from that provision that the Member States must, first, adopt measures to ensure that the hydromorphological conditions of the body of water enable bodies of water designated as artificial or heavily modified to achieve the required ecological status or good ecological potential and, second, establish and carry out the controls necessary for that purpose, in particular in the form of prior authorisation or registration based on general binding rules, within the meaning of the said provision.
- 201 In the case at hand, as the Commission has noted, regulation 6 of, and point 8 of Schedule 2 to, the 2009 Surface Waters Regulations formally transpose the obligation to adopt the measures and controls provided for in Article 11(3)(i) of Directive 2000/60 by reiterating, inter alia, the obligation to monitor the hydromorphological conditions of bodies of surface water, a control which may take the form of prior authorisation or registration. In that regard, as the Commission and Ireland agree, Article 11(3)(i) of that directive does not impose any particular form of control measures, provided that, within each river basin district, a regime for controlling hydromorphological conditions, within the meaning of that provision, is put in place.
- 202 That being said, while point 8 of Schedule 2 to the 2009 Surface Waters Regulations states, like Article 11(3)(i) of the said directive, that the controls ‘may take the form of a requirement for prior authorisation or registration’, Ireland merely indicates that, in view of the particular complexity of hydromorphology, it has put in place several detailed control regimes, without however setting out the general binding rules of domestic law, for the purposes of that Article 11(3)(i), on which such control regimes are based.
- 203 It follows that the first part of the present complaint is well founded.

- 204 By the second part of the present complaint, the Commission submits that the obligation laid down in Article 11(3)(i) of Directive 2000/60 must relate not only to surface water but also, directly or indirectly, to groundwater, to which the transposition measures notified by Ireland and/or those examined by the Commission do not relate.
- 205 In that regard, it must be borne in mind that the objective of the measures which must be adopted by the Member States under Article 11(3)(i) of Directive 2000/60 is to ensure that the hydromorphological conditions of bodies of water are consistent with the achievement of the required ecological status, or good ecological potential for bodies of water designated as artificial or heavily modified.
- 206 In accordance with Article 2(8) of that directive, an artificial body of water is a body of surface water created by human activity. According to Article 2(9) of the said directive, a ‘heavily modified water body’ is ‘a body of surface water which as a result of physical alterations by human activity is substantially changed in character, as designated by the Member State in accordance with the provisions of Annex II [to the same directive]’. It is also apparent from point 1.1 of that Annex II that those two types of body of water are surface waters.
- 207 Since artificial and heavily modified bodies of water fall under not groundwater, but surface water, it must be held that the Commission has not demonstrated that it was incumbent on Ireland to adopt the necessary national measures to transpose the obligations set out in Article 11(3)(i) of Directive 2000/60 in respect of bodies of groundwater.
- 208 It is true that, in its reply, the Commission claims that a correct transposition of that Article 11(3)(i) could nevertheless be achieved through measures to control hydromorphological conditions focusing solely on surface waters, provided that the indirect potential impacts on groundwaters are specifically taken into consideration.
- 209 In accordance with settled case-law on the burden of proof in proceedings under Article 258 TFEU for failure to fulfil obligations, it is for the Commission to prove the alleged infringement and to provide the Court with all the information necessary for it to determine whether the infringement is made out, and the Commission may not rely on any presumption for that purpose (see, to that effect, judgment of 29 July 2024, *Commission v Portugal (Civil engineers)*, C-768/22, EU:C:2024:643, paragraph 79 and the case-law cited).
- 210 However, it must be held that the Commission has not provided any legal evidence in support of its argument, put forward moreover for the first time in its reply, that a correct transposition of Article 11(3)(i) of Directive 2000/60, although having to focus on surface waters, necessarily had to take into consideration the ‘indirect potential impacts’ on groundwaters.
- 211 It follows that the second part of the eleventh plea must be rejected.

212 Consequently, the eleventh complaint must be upheld in so far as it alleges incomplete transposition of Article 11(3)(i) of Directive 2000/60 as regards surface waters and rejected as to the remainder.

***Twelfth complaint: failure to transpose Article 11(3)(l) of Directive 2000/60 in relation to groundwater***

*Arguments of the parties*

213 According to the Commission, Article 11(3)(l) of Directive 2000/60 requires Member States to establish a detection and warning system in order to reduce the risks to aquatic ecosystems in the event of accidental pollution, including for groundwater.

214 Neither the provisions of the 2003 Regulations nor those of the 2009 Surface Waters Regulations which were notified by Ireland as measures transposing that Article 11(3)(l), however, nor the various measures mentioned by the Irish authorities during the pre-litigation phase of the procedure constitute measures for the clear and effective transposition of the requirements laid down in that provision with regard to groundwater.

215 The Commission therefore requests the Court to declare that Ireland has failed to transpose the said provision in relation to groundwater.

216 Ireland submits that regulation 3(1) and regulation 12(2) of the 2003 Regulations, as supplemented by the 2009 Surface Waters Regulations, are in principle sufficient to implement in domestic law the obligations contained in Article 11(3)(l) of Directive 2000/60. However, in accordance with the obligation of sincere cooperation, Ireland undertakes to amend the 2010 Groundwater Regulations by 31 December 2024, so as to expressly include the requirements set out in that Article 11(3)(l).

*Findings of the Court*

217 Among the ‘basic measures’ listed in Article 11(3) of Directive 2000/60, point (l) of that provision refers to ‘any measures required to prevent significant losses of pollutants from technical installations, and to prevent and/or to reduce the impact of accidental pollution incidents for example as a result of floods, ..., all appropriate measures to reduce the risk to aquatic ecosystems’.

218 The Commission criticises Ireland for having failed to transpose Article 11(3)(l) in relation to groundwater.

219 In that regard, it should be noted that the argument put forward by Ireland in response to that complaint is similar to the one relied on by that Member State in the context of the sixth to ninth complaints. Ireland submits, in essence, that regulation 12(2) of the 2003 Regulations, read in conjunction with

regulation 3(1)(a) and (b) thereof, is sufficient to ensure a correct implementation of the obligations contained in Article 11(3)(l) of Directive 2000/60.

- 220 That line of argument, however, must be rejected for the same reasons as those which have been set out in paragraphs 161 to 163 of the present judgment.
- 221 It follows that the twelfth complaint, alleging failure to transpose Article 11(3)(l) of Directive 2000/60 in relation to groundwater, is well founded.

***Thirteenth complaint: failure to transpose points 1.4 and 1.5 of Annex II to Directive 2000/60***

*Arguments of the parties*

- 222 The Commission recalls that one of the main provisions of Directive 2000/60 is Article 5, which concerns the identification of the characteristics of a river basin district, a review of the environmental impact of human activity on the waters in that district and an economic analysis of water use in the said district. Annex II to that directive sets out many of the technical specifications according to which those tasks must be carried out.
- 223 Those specifications include points 1.4 and 1.5 of Annex II, which concern, respectively, identification of the anthropogenic pressures to which the surface water bodies in a river basin district are liable to be subject and the assessment of the susceptibility of the surface water status of each surface water body to those pressures. According to the Commission, those points speak directly to the second of the three pillars on which Article 5 of that directive is based, namely a review of the environmental impact of human activity on the waters in a river basin district.
- 224 The Commission notes, however, that there is no provision in Irish law transposing those two points of the said Annex II. There is no mention of them in the 2022 Regulations, which amended the 2003 Regulations and which however transposed other points of the same Annex II.
- 225 The Commission adds that, while it does not dispute Ireland's assertion that it is legitimate, in practice, to leave it to a competent authority, such as the EPA, to select by means of a technical evaluation which of the elements detailed in points 1.4 and 1.5 of Annex II to Directive 2000/60 need monitoring and assessment, it does not agree with the Irish authorities' conclusion that it is not necessary for the scope of that discretion to be described in national law, where, as in the case at hand, the points in question are central to the effective functioning of the framework established by that directive.
- 226 Ireland states that, in view of the Commission's concerns and in accordance with the duty of sincere cooperation, it made express reference to that Annex II in the 2022 Regulations, which amends the 2003 Regulations.

- 227 However, the Commission's thirteenth complaint amounts to a requirement that all of the detailed provisions of the said Annex II – points 1.4 and 1.5 in this case – be incorporated formally and verbatim in express, specific legislation, even though the Commission has acknowledged that some of those provisions are of a highly technical nature appropriate for technical evaluation by the relevant national authority.
- 228 Without prejudice to that position, Ireland indicates that it undertakes to amend the 2003 Regulations again, before 31 December 2024, to insert points 1.4 and 1.5 of Annex II to Directive 2000/60 into them.

*Findings of the Court*

- 229 It bears recalling that, in order to achieve the environmental objectives set out in Article 4 of Directive 2000/60, Member States must have a comprehensive overview of the characteristics of the bodies of water concerned. To that end, in accordance with Article 3 of Directive 2000/60, Member States, first, are to identify the individual river basins, assign them to districts and identify the competent authorities. Next, they are to characterise the bodies of water as required by Article 5(1) of Directive 2000/60 and Annexes II and III thereto. Under that provision, each Member State is to ensure that for each river basin district falling within its territory, an analysis of its characteristics, a review of the impact of human activity on the status of groundwater and an economic analysis of water use are carried out, according, in particular, to the technical specifications set out in Annexes II and III (judgment of 24 June 2021, *Commission v Spain (Deterioration of the Doñana natural area)*, C-559/19, EU:C:2021:512, paragraphs 85 to 87).
- 230 In terms of the technical specifications listed in Annex II to Directive 2000/60, it should be noted that point 1 thereof sets out the requirements with which Member States must comply in relation to surface water bodies.
- 231 Pursuant to point 1.4 to that Annex II, entitled 'Identification of Pressures', Member States must collect and maintain information on the type and magnitude of the significant anthropogenic pressures to which the surface water bodies in each river basin district are liable to be subject. Those tasks include estimation and identification of significant point source and diffuse source pollution, in particular by the substances listed in Annex VIII to that directive, from urban, industrial, agricultural and other installations and activities, based on information gathered under the acts of EU law referred to in that point 1.4. The said tasks also include estimation and identification of significant water abstraction for urban, industrial, agricultural and other uses and of loss of water in distribution systems as well as identification of the impact of significant water flow regulations and of significant morphological alterations to water bodies.
- 232 According to point 1.5 of Annex II, entitled 'Assessment of Impact', Member States must carry out an assessment of the susceptibility of the surface water

status of bodies to the pressures identified in the said point 1.4, since the information collected enables them to carry out an assessment of the likelihood that surface water bodies will fail to meet with the environmental quality objectives set under Article 4 of Directive 2000/60.

233 So far as concerns the present complaint, by which the Commission criticises Ireland for having failed to transpose points 1.4 and 1.5 of Annex II to that directive, it should be pointed out that that Member State does not dispute that, on the expiry of the period laid down in the additional reasoned opinion, namely 30 December 2020, there was no domestic law provision implementing those points.

234 Ireland however submits, in essence, that, having regard to the technical nature of the requirements listed in points 1.4 and 1.5 of that Annex II, it was sufficient, in the context of the 2003 Regulations, to allocate the EPA with responsibility for compliance with the provisions of Article 5 of Directive 2000/60, thereby leaving it to that authority to assess the need to carry out the reviews and the technical evaluations provided for in those points.

235 That line of argument cannot be accepted.

236 In that regard, it is common ground that, under regulation 7 of the 2003 Regulations, in the version in force at the end of the period laid down in the additional reasoned opinion, the relevant local authorities, namely city councils and county councils, situated in whole or in part within a river basin district, were responsible for carrying out the analyses and reviews referred to in Article 5 of Directive 2000/60, which they had to transmit to the EPA and coordinate with that agency the review and periodic updating of those analyses and reviews.

237 As regards the review of the impact of human activity on the status of surface waters, referred to in regulation 7(2)(b) of those regulations, however, it does not appear, as the Commission has rightly submitted, that Ireland has adopted the appropriate transposition measures in order for the discretion of those authorities as regards the identification of significant anthropogenic pressures on surface water bodies and the assessment of the susceptibility of those water bodies to those pressures to be framed in such a way as to comply with the requirements of points 1.4 and 1.5 of Annex II to Directive 2000/60.

238 The need for such a framework does not mean, contrary to what Ireland claims, that that Member State is obliged to incorporate the said requirements formally and verbatim in a legislative or regulatory provision.

239 Such a framework simply means that the Member States must ensure that the relevant national authorities are fully equipped, on the one hand, to estimate and identify in an appropriate manner the significant anthropogenic pressures to which surface water bodies in each river basin district are liable to be subject, a non-exhaustive list of which is set out in point 1.4 of Annex II to Directive 2000/60, and, on the other hand, to carry out the assessment provided for in point 1.5 of that

Annex II. In that context, Member States are free to require the relevant national authorities to take into account, inter alia, the pressure exerted on the use of surface water bodies by sectors or activities other than those mentioned in point 1.4 of the said Annex II, depending, in particular, on the specific characteristics of the local economy or of a given river basin district, or to specify the type of information that those authorities must collect and/or the types of tools for assessing the impact on those surface water bodies that they must or may use.

- 240 It follows that the thirteenth complaint, alleging failure to transpose points 1.4 and 1.5 of Annex II to Directive 2000/60, is well founded.

***Fourteenth complaint: failure to transpose points 1.3 to 1.3.5 and the first paragraph of point 2.4.5 of Annex V to Directive 2000/60***

*Arguments of the parties*

- 241 As a preliminary point, the Commission emphasises that Annex V to Directive 2000/60 sets out the parameters in relation to which the status of a body of water is established. Indeed, as Article 2(21) of that directive indicates, ‘ecological status’ is ‘an expression of the quality of the structure and functioning of aquatic ecosystems associated with surface waters, classified in accordance with Annex V [thereto]’. One of the key environmental objectives of that directive, set forth in Article 4 thereof, is to achieve ‘good’ surface water status, as it is defined in Annex V to Directive 2000/60. That Annex V is also essential for the monitoring of water status, provided for in Article 8 of that directive, and for the development of strategies to prevent and control groundwater pollution, in accordance with Article 17 of the said directive.
- 242 In that context, the Commission criticises Ireland for having failed to transpose either point 1.3 of Annex V to the same directive, more specifically the requirements set out in points 1.3.1 to 1.3.5 thereof, or the first paragraph of point 2.4.5 of that Annex V.
- 243 In terms of that point 1.3, which concerns the requirements relating to the monitoring of the ecological status and chemical status of surface waters, beyond the repetition of the title of that point in a section of the European Communities Environmental Objectives (Surface Waters) (Amendment) Regulations 2022 (S.I. No 288 of 2022), which was notified by Ireland on 17 June 2022 and which amended the 2009 Surface Waters Regulations, none of the requirements set out in points 1.3.1 to 1.3.5 of Annex V to Directive 2000/60 have been transposed into Irish law. The circumstance, mentioned by Ireland during the pre-litigation phase, according to which ‘the [EPA] has full regards to Annex V [thereto] in practice’, is insufficient.
- 244 As regards the first paragraph of point 2.4.5 of Annex V, which concerns the interpretation and presentation of groundwater chemical status, no provision of Irish law makes mention of it. The requirements set out in that point, concerning

the aggregation of monitoring results in order to assess the status of a body of groundwater, however, are essential elements of Directive 2000/60 and the circumstance, relied on by Ireland, that ‘the [EPA] has full regards to Annex V [thereto] in practice’ is not sufficient.

- 245 The Commission therefore asks the Court to declare that Ireland has failed to fulfil its obligation to transpose correctly and fully points 1.3.1 to 1.3.5 and the first paragraph of point 2.4.5 of Annex V to Directive 2000/60.
- 246 As a preliminary observation, Ireland states that, in view of the highly complex, detailed and technical nature of the matters set out in Annex V to Directive 2000/60, it took the reasonable view that the EPA was best placed to implement the requirements listed in that Annex V.
- 247 However, in view of the concerns expressed by the Commission, Ireland emphasises that it agreed, by adopting the 2022 Regulations, to amend the 2003 Regulations, including an express reference to the said Annex V. Likewise, the 2009 Surface Waters Regulations and the 2010 Groundwater Regulations now make express reference to the same Annex V since their respective amendments by the European Communities Environmental Objectives (Surface Waters) (Amendment) Regulations 2022 and by the European Communities Environmental Objectives (Groundwater) (Amendment) Regulations 2022 (S.I. No. 287 of 2022).
- 248 Although Ireland considers that, in view of those texts, the requirements of Annex V to Directive 2000/60 have been fully complied with, Ireland nevertheless undertakes to adopt, before 31 December 2024, additional amendments to the 2003 Regulations, the 2009 Surface Waters Regulations and the 2010 Groundwater Regulations so as to include an express reference to points 1.3 and 2.4.5 of that Annex V.

*Findings of the Court*

- 249 As follows in particular from the provisions of Article 4 of Directive 2000/60, that directive requires Member States to prevent deterioration of the status of bodies of water, in accordance with the ultimate objective of that directive, which is to achieve at least ‘good status’ of all waters and maintain that status, as stated in recital 26 of the said directive (see, to that effect, judgment of 5 May 2022, *Association France Nature Environnement (Temporary impacts on surface water)*, C-525/20, EU:C:2022:350, paragraphs 34 to 37 and 39).
- 250 To that end, Article 8(1) of Directive 2000/60 requires Member States to ensure the establishment of programmes for the monitoring of water status within each river basin district which cover in particular, for surface waters, the ecological and chemical status and ecological potential and, for groundwaters, monitoring of the chemical and quantitative status. In accordance with Article 8(2) of that directive, such monitoring is to be in accordance with the requirements of Annex V thereto.

It follows that the transposition of the requirements listed in Annex V to that directive is essential to ensure the establishment of measures guaranteeing the monitoring, in particular, of the ecological and chemical status of surface waters and of the chemical status of groundwaters.

- 251 By the present complaint, the Commission criticises Ireland, first, for having failed to transpose point 1.3 of Annex V, entitled ‘Monitoring of ecological status and chemical status for surface waters’, in particular points 1.3.1 to 1.3.5 thereof, and, second, the first paragraph of point 2.4.5 of Annex V, entitled ‘Interpretation and presentation of groundwater chemical status’.
- 252 It should be noted that, while it is not disputed that, on the expiry of the period laid down in the additional reasoned opinion, namely 30 December 2020, regulation 10(1) and (2) of the 2003 Regulations implemented Article 8(1) of Directive 2000/60, by entrusting the EPA with the obligation to establish a monitoring programme for water status in Ireland which relates to the elements listed in that Article 8(1), by contrast, no provision of Irish law transposed the abovementioned disputed points of Annex V to Directive 2000/60, the elements of which, moreover, were not even mentioned in the 2003 Regulations.
- 253 Contrary to what Ireland claims, the requirement to transpose the said disputed points of that Annex V cannot be achieved by the EPA’s administrative practice, for the same reason as that set out in paragraph 146 of the present judgment.
- 254 Accordingly, it must be held that the fourteenth complaint, alleging failure to transpose points 1.3 to 1.3.5 and the first paragraph of point 2.4.5 of Annex V to Directive 2000/60, is well founded.
- 255 In the light of all the foregoing considerations, it must be held that, by failing to transpose fully or correctly Article 2(38), Article 4(2), Article 5(2), Article 7(3), Article 9(2), Article 11(3)(a) to (d) in relation to groundwater, Article 11(3)(e), Article 11(3)(i) in relation to surface water, Article 11(3)(l) in relation to groundwater, and points 1.4 and 1.5 of Annex II to, and points 1.3.1 to 1.3.5 and point 2.4.5, first paragraph, of Annex V to Directive 2000/60, Ireland has failed to fulfil its obligations under those provisions.
- 256 The action is dismissed as to the remainder, namely in so far as it concerns the second part of the eleventh complaint, alleging infringement of Article 11(3)(i) of Directive 2000/60 in relation to surface water.

### **Costs**

- 257 Under Article 138(1) of the Rules of Procedure of the Court of Justice, the unsuccessful party must be ordered to pay the costs if they have been applied for in the other party’s pleadings. Since the Commission has applied for costs and Ireland has essentially been unsuccessful, the latter must be ordered to pay the costs.

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

1. **Declares that, by failing to transpose fully or correctly Article 2(38), Article 4(2), Article 5(2), Article 7(3), Article 9(2), Article 11(3)(a) to (d) in relation to groundwater, Article 11(3)(e), Article 11(3)(i) in relation to surface water, Article 11(3)(l) in relation to groundwater, and points 1.4 and 1.5 of Annex II to, and points 1.3.1 to 1.3.5 and point 2.4.5, first paragraph, of Annex V to Directive 2000/60/EC of the European Parliament and of the Council of 23 October 2000 establishing a framework for Community action in the field of water policy, Ireland has failed to fulfil its obligations under those provisions;**
2. **Dismisses the action as to the remainder;**
3. **Orders Ireland to pay the costs.**

Condinanzi

Jääskinen

Frendo

Delivered in open court in Luxembourg on 20 November 2025.

A. Calot Escobar

M. Condinanzi

Registrar

President of the Chamber