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*(Information)*

## COURT OF JUSTICE

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**Action brought on 6 February 2006 — Commission of the European Communities v Ireland****(Case C-66/06)**

(2006/C 108/01)

*Language of the case: English***Parties**

*Applicant:* Commission of the European Communities (represented by: F. Simonetti and X. Lewis, Agents, F. Louis, avocat and C. O'Daly, Solicitor)

Defendant: Ireland

**The applicant claims that the Court should:**

- declare that, by not adopting, in conformity with Articles 2(1) and 4(2), (3) and (4) of the EIA Directive, all measures to ensure that, before consent is given, projects likely to have significant effects on the environment that belong to the categories of projects covered by Annex II Class 1(a), (b), (c) and (f) are made subject to a requirement for development consent and to an assessment with regard to their effects in accordance with Articles 5 to 10 of the EIA Directive, Ireland has failed to fulfil its obligations under the said Directive; and
- order Ireland to pay the costs.

**Pleas in law and main arguments**The use of uniform, unqualified size thresholds

The Commission considers the Irish transposing legislation is deficient as it does not provide, in respect of project categories covered by Annex II Class 1(a), (b) and (c) of the Environmental Impact Assessment (the EIA Directive), for effective measures to achieve the results required by Articles 2(1), 4(2) and 4(3) of the EIA Directive.

Article 4(2) permits Member States to determine, by either a case-by-case examination or by 'thresholds or criteria set by the Member State', the necessity of an EIA for projects listed in Annex II. Whatever the means of determination implemented by the Member State, this means must satisfy Article 4(3), i.e., take into account the selection criteria listed in Annex III. These selection criteria include, for example, the project size, cumulation with other projects, its location, the environmental sensitivity of the geographical area and its impact on landscapes of historical, cultural or archaeological significance.

In its transposing legislation regarding projects falling under Annex II Class 1(a), (b) and (c), Ireland has, however, relied on a uniform, unqualified size threshold without any possibility of assessing any other project characteristics.

Intensive fish farming

With regard to trial fish farms, the transposing legislation would appear to allow for the possibility of an EIA 'if the Minister considers that the proposed aquaculture is likely to have significant effects on the environment.' This legislation, however, does not contain any reference to the selection criteria set out in Annex III of the EIA Directive. Thus, the Minister is under no express obligation to take account of the proposed location of such a trial fish farm or of any of the other selection criteria, for the purposes of determining if an EIA is necessary.

The Commission notes that Ireland acknowledges the need to make express provision for the Annex III selection criteria with regard to fish farm projects. However, as far as the Commission is aware, no amending legislation has been enacted or communicated to the Commission.