

Brussels, 17 October 2007

Ireland: Commission to bring environmental impact assessment case to the European Court of Justice

The European Commission has decided to refer Ireland to the European Court of Justice (ECJ) in a case concerning European Community (EC) legislation on environmental impact assessments. The case concerns provisions of Irish legislation governing the approval of incinerators and other large industrial projects and provisions governing the removal of important archaeological sites. The Commission is happy to announce that steps taken by the Irish authorities have brought the Commission to close a separate case concerning nitrates. The Commission also welcomes a co-operation document agreed between Ireland and the United Kingdom on combating illegal waste exports.

EU Environment Commissioner Stavros Dimas said: "I am disappointed that Ireland has not accepted the Commission view that improvements are needed in its legislation on impact assessments in order to better safeguard, and give the public more say in decisions affecting, its rich archaeological heritage, and to better guarantee that industrial projects will be comprehensively assessed."

Court referral on Irish environmental impact assessment rules

The Commission is referring Ireland to the ECJ over shortcomings in Irish legislation used to implement the Environmental Impact Assessment Directive¹. Under the directive, Member States are obliged to carry out environmental impact assessments (EIA) before certain types of public and private projects believed to have a significant impact on the environment are authorised. The Commission's case is divided into two parts.

First, the Commission considers Ireland's approach to decisions involving the removal of historic structures and archaeological monuments to be in contravention of the directive. The directive expressly mentions effects on archaeological heritage and the Commission is concerned that Ireland interprets the directive as not applying to certain separate decisions involving the removal of structures and monuments in order to facilitate infrastructure and other project types covered by the directive. In a final warning sent to Ireland in June 2007, the Commission mentioned by way of example the lack of an assessment carried out for a 2007 decision to remove a national monument situated at Lismullin in the path of the M3 motorway project near Tara in County Meath. Because the pre-historic site was only identified in 2007, its significance could not be taken into account in a 2003 assessment of the motorway project. In response, Ireland argues that the ministerial direction in relation to the excavation and preservation by record of the national monument in question does not constitute an element of the development consent for the M3 under the provisions of the Directive.

¹ Directive 85/337/EEC on the assessment of the effects of certain public and private projects on the environment

Secondly, the Commission considers that, because of weaknesses in Irish legislation splitting decision-making between Irish planning authorities and Ireland's Environmental Protection Agency, there are risks that outcomes required by the directive will not always be achieved. When decisions are being taken on proposed incinerators and other industrial projects, for example, Irish rules do not guarantee that inter-actions such as those between pollution-control measures and the landscape will be adequately assessed and taken into account. In its response to the Commission's June 2007 final written warning Ireland strongly defends its project approval procedure.

Closure of case on the Nitrates Directive

The adoption of higher national sanctions this summer has allowed the Commission to close its case against Ireland for breaching the Nitrates Directive². In March 2004 Ireland was condemned by the ECJ for not putting in place an action programme to reduce nitrate pollution from agricultural run-off³. Since then Ireland has adopted new legislation to give effect to an action programme. This involves requirements to safely store slurries, prohibit land-spreading during the winter and avoid excessive use of fertilizers.

Co-operation document on illegal waste exports

The Commission welcomes the adoption of a co-operation document aimed at strengthening contacts between Ireland and the United Kingdom to combat illegal waste exports. In 2004, the Commission contacted both Member States after becoming aware of significant illegal waste exports from Ireland to Northern Ireland. Following this, both States worked together to deal with the problem and have agreed on a co-operation document.

Legal Process

Article 226 of the Treaty gives the Commission powers to take legal action against a Member State that is not respecting its obligations.

If the Commission considers that there may be an infringement of EU law that warrants the opening of an infringement procedure, it addresses a "Letter of Formal Notice" (first written warning) to the Member State concerned, requesting it to submit its observations by a specified date, usually two months.

In the light of the reply or absence of a reply from the Member State concerned, the Commission may decide to address a "Reasoned Opinion" (final written warning) to the Member State. This clearly and definitively sets out the reasons why it considers there to have been an infringement of EU law, and calls upon the Member State to comply within a specified period, usually two months.

If the Member State fails to comply with the Reasoned Opinion, the Commission may decide to bring the case before the Court of Justice. Where the Court of Justice finds that the Treaty has been infringed, the offending Member State is required to take the measures necessary to conform.

² Directive 91/676/EEC concerning the protection of waters against pollution caused by nitrates from agricultural sources

³ Case C-396/01, *Commission v Ireland*

Article 228 of the Treaty gives the Commission power to act against a Member State that does not comply with a previous judgement of the European Court of Justice. The article also allows the Commission to ask the Court to impose a financial penalty on the Member State concerned.

For rulings by the European Court of Justice see:

<http://curia.eu.int/en/content/juris/index.htm>