

## Maire Buckley

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**From:** Licensing Staff  
**Sent:** 31 August 2010 13:56  
**To:** Sonja Smith; Maire Buckley  
**Subject:** FW: New Third Party objection entered for Reg no: P0738-02. (Reference Number: P0738-02-100830045637)  
**Attachments:** EPA.pdf  
**Importance:** High  
**Follow Up Flag:** Follow up  
**Flag Status:** Flagged

Josephine Kennedy  
Environmental Licensing Programme  
Office of Climate, Licensing and Resource Use,  
Environmental Protection Agency  
Headquarters  
P.O. Box 3000  
Johnstown Castle Estate,  
Wexford  
053 9160600  
Email: [j.kennedy@epa.ie](mailto:j.kennedy@epa.ie)  
Web: [www.epa.ie](http://www.epa.ie)

**From:** Peter Sweetman [mailto:[sweetmanplanning@gmail.com](mailto:sweetmanplanning@gmail.com)]  
**Sent:** 30 August 2010 16:57  
**To:** Licensing Staff  
**Subject:** New Third Party objection entered for Reg no: P0738-02. (Reference Number: P0738-02-100830045637)  
**Importance:** High

**Title:** Mr  
**First Name:** Peter  
**SurName:** Sweetman  
**Organisation Name:**  
**Address Line 1:** Rossport South  
**Address Line 2:** Ballina  
**Address Line 3:**  
**County:** Mayo  
**Post Code:** 0000  
**Phone Number:**  
**Email:** [sweetmanplanning@gmail.com](mailto:sweetmanplanning@gmail.com)  
**Objector Type:** Third Party  
**Oral Hearing:** No

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PETER SWEETMAN & MONICA MULLER  
ROSSPORT SOUTH  
BALLINA  
COUNTY MAYO  
[sweetmanplanning@gmail.com](mailto:sweetmanplanning@gmail.com)

The Environmental Protection Agency  
Johnstown Castle  
Wexford  
30<sup>th</sup> August 2010

RE: P0738-02 Shell E & P Ireland Ltd.

Dear Sir/Madam

We Monica Muller & Peter Sweetman wish to appeal the Proposed Decision of the Environmental Protection Agency in this matter.

The assessment by the Environmental Protection Agency was fundamentally flawed in Community Law, which has priority over Irish Law.

**The Inspector states on the assessment of the submissions;**

C. Peter Sweetman 19/04/2010

Mr. Sweetman states that the development is covered by Annex I of the Environmental Impact Assessment (EIA) Directive 85/337 as amended. He states that no **EIS** was submitted with the application and that the development of the refinery does not have valid planning permission. He further states that the development of the pipeline does not have planning permission and that the development has substantially changed since the original EIS. He requests a copy of the scoping document which found that the development is exempt from EIA.

*Comment:*

It is confirmed that an **EIS** did not accompany the review application. SEPIL. in their review application provided a letter from Mayo County Council, the competent authority for requiring an EIA, which clearly states that in Mayo County Council opinion an EIA is not required for this development. Therefore the request for the scoping document which found that the development was exempt from EIA should be directed to Mayo County Council. The Agency cannot require an **EIA** to be undertaken. The validity of planning and the need for planning permission for any aspect of the installation is a matter for the planning authorities.

The European Courts of Justice found in case C-06-66 Commission v Ireland (Attached)

1. Declares that, by not adopting, in conformity with Articles 2(1) and 4(2) to (4) of Council Directive 85/337/EEC of 27 June 1985 on the assessment of the effects of certain public and private projects on the environment, as amended by Council Directive 97/11/EC of 3 March 1997, all the measures necessary 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 point 1(a) to (c) and (f) of Annex II to that directive are made subject to a requirement for development consent and to an assessment with regard to their environmental effects in accordance with Articles 5 to 10 of the directive, Ireland has failed to fulfil its obligations under the directive;

It is our Submission that this development being an Annex I development of European Directive 85/337/EEC as amended by Directives 97/11/EC and 2003/35/EC, it is clear that the licence application to the Environmental Protection Agency is covered by this judgement.

Therefore an Environmental Impact Assessment was and is required.

Mayo County Council does not have any applications before it relevant to the Environmental Impact Assessment of this project. This is a SIA project and as such An Bord Pleanála is the relevant Planning Authority. There is an application currently before the Minister for Environment for a Foreshore Licence which includes an EIS. There is currently an Application under Section 40 of the Gas Act 1976 as amended before the Minister for Communications, Energy and Natural Resources which includes an EIS.

The proposed development currently under scrutiny is substantially different to that for which the Environmental Protection Agency previously issued a Licence under Licence No. P0738-01.

The Environmental Protection Agency did not perform an Assessment as required under Article 3 of European Directive 85/337/EEC as amended by Directives 97/11/EC and 2003/35/EC, either for that application or for this one.

The European Commission is currently taking Ireland before the European Courts of Justice for the following:

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

- declare that by failing to transpose Article 3 of Council Directive 85/337/EEC (1) on the assessment of the effects of certain public and private projects on the environment as amended;
- declare that by failing to ensure that, where Irish planning authorities and the Environmental Protection Agency both have decision-making powers on a project, there will be complete fulfilment of the requirements of Articles 2, 3 and 4 of that Directive;

Ireland has failed to fulfil its obligations under that Directive.

— order Ireland to pay the costs.

## **The Pleas in law and main arguments are:**

### **Failure to transpose article 3 of the directive**

The Commission submits that Section 173 of the Planning and Development Regulations 2000, which requires planning authorities to have regard to the environmental impact statement (EIS) and information coming from consultees, relates to the duty under art. 8 of the directive to take into consideration information gathered pursuant to arts. 5, 6 and 7 of the directive.

In the Commission's view Section 173 does not correspond to the wider duty under art. 3 of the directive to ensure that an environmental impact assessment (EIA) identifies, describes and assesses all the matters referred to in that provision.

As for Articles 94, 108 and 111 and Schedule 6 of the Planning and Development Regulations 2001, the Commission makes the following observations. Art. 94 read with Schedule 6.2(b) sets out the information that an EIS must contain. This is a reference to the information that the developer must provide pursuant to art. 5 of the directive; it is therefore to be distinguished from the EIA which is the overall assessment process. Arts. 108 and 111 require planning authorities to consider the adequacy of an EIS. The Commission considers that these provisions relate to Art. 5 of the directive but are not a substitute for a transposition of art. 3 of the directive. The information to be provided by a developer is only one part of an EIA and provisions concerning such information are not a substitute for the obligation set out in art. 3.

### **Failure to require proper coordination between authorities**

Although the Commission has no objection in principle to multi-stage decision-making or to decision-making responsibility for the same project being divided between different decision-makers, it does have concerns relating to the precise manner in which duties on different decision-makers are framed. In the Commission's view Irish legislation contains no obligation on decision-makers to coordinate with each other effectively and is, therefore, contrary to articles 2, 3 and 4 of the directive.

It is our submission that the failure of the Environmental Protection Agency to coordinate between the relevant Authorities in this case is a clear and definite breach of Community Law.

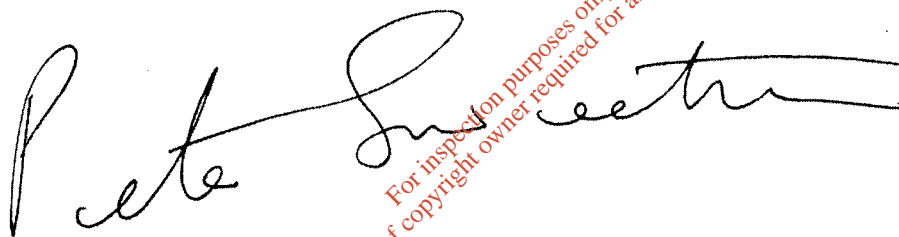
It is our submission that the failure of the Environmental Protection Agency to reject this application, as it was not accompanied by an EIS is a fundamental breach of Community Law.

It is our submission that the failure of the Environmental Protection Agency to require that an EIS be submitted with this application case is a clear breach of Community Law.

We also attach to this submission the Stated Question from the Supreme Court to the European Courts of Justice concerning the interpretation of the Habitats Directive in proceedings involving the Galway City Outer Bypass. The Stated Questions relate to Interpretation of the Habitats Directive and the Application of the Habitats Directive in Ireland when Irish statutory Authorities are considering Applications for Consent(s).

It is our submission that the Environmental Protection Agency in failing to carry out an assessment of this Project, being an Annex I of European Directive 85/337/EEC as amended by Directives 97/11/EC and 2003/35/EC Project, is contrary to the established case law of the European Courts of Justice and contrary to the Provisions of the EIA and Habitats/Birds Directives.

Yours faithfully

A handwritten signature in black ink, appearing to read 'Peter Sweetman', is written over a red diagonal watermark. The watermark text reads: 'For inspection purposes only. Consent of copyright owner required for any other use.'

Peter Sweetman and on behalf of Monica Muller

Attached;  
Judgement in Case C-66/06 of the European Courts of Justice  
Extract from the Official Journal of the European Union C 82/19  
Copy letters to  
An Bord Pleanála  
Minister For Environment Heritage and Local Government.  
Minister for Communications, Energy and Natural Resources  
Stated Question to the European Courts of Justice

## 62006J0066 v Ireland Kenmare

### Title and reference

**Judgment of the Court (Second Chamber) of 20 November 2008.**

**Commission of the European Communities v Ireland.**

**Failure of a Member State to fulfil obligations - Directive 85/337/EEC - Assessment of the effects of projects on the environment - Consent given without an assessment.**

**Case C-66/06.**

*European Court reports*  
*xxxx.RJ Page xxxx omm*

### Keywords

Procedure – Application initiating proceedings – Formal requirements (Rules of Procedure of the Court of Justice, Art. 38(1)(c)) (see paras 30-31)

2. Environment – Assessment of the effects of certain projects on the environment – Directive 85/337 (Council Directive 85/337, as amended by Directive 97/11, Arts 2(1) and 4(2) and Annexes II, point 1(a) to (c), and III) (see para. 85, operative part 1)

3. Actions for failure to fulfil obligations – Examination of the merits by the Court – Situation to be taken into consideration – Situation on expiry of the period laid down in the reasoned opinion (Art. 226 EC) (see para. 91)

4. Environment – Assessment of the effects of certain projects on the environment – Directive 85/337 (Council Directive 85/337, as amended by Directive 97/11, Arts 2(1) and 4(2) and Annexes II, point 1(f), and III) (see paras 93, 95, operative part 1)

### Subject of the case

Re:

Failure of a Member State to fulfil obligations – Infringement of Articles 2(2) and 4(2) to (4) of Council Directive 85/337/EEC of 27 June 1985 on the assessment of the effects of certain public and private projects on the environment (OJ 1985 L 175, p. 40), as amended by Directive 97/11/EC of 3 March 1997 (OJ 1997 L 73, p. 5) – Consent given without an assessment.

### Operative part

Operative part

The Court:

1. Declares that, by not adopting, in conformity with Articles 2(1) and 4(2) to (4) of Council Directive 85/337/EEC of 27 June 1985 on the assessment of the effects of certain public and private projects on the environment, as amended by Council Directive 97/11/EC of 3 March 1997, all the measures necessary 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 point 1(a) to (c) and (f) of Annex II to that directive are made subject to a requirement for development consent and to an assessment with regard to their environmental effects in accordance with Articles 5 to 10 of the directive, Ireland has failed to fulfil its obligations under the directive;
2. Orders Ireland to pay the costs of the Commission of the European Communities;
3. Orders the Republic of Poland to bear its own costs.

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conditions laying down a minimum content for dry cocoa solids which is greater than that laid down for the use of names in which those descriptions do not appear. The Italian legislation makes the use of the word 'puro' subject simply to the presence of cocoa butter by way of fat and there is no requirement to comply with the higher minimum content for dry cocoa solids. That constitutes an infringement of Article 3(5) of the directive and is misleading for the consumer.

(<sup>1</sup>) Directive 2000/36/EC of the European Parliament and of the Council of 23 June 2000 relating to cocoa and chocolate products intended for human consumption (OJ 2000 L 197, p. 19).

(<sup>2</sup>) Directive 2000/13/EC of the European Parliament and of the Council of 20 March 2000 on the approximation of the laws of the Member States relating to the labelling, presentation and advertising of foodstuffs (OJ 2000 L 109, p. 29).

trade mark protection, independently of whether the criteria of art. 7(1)(e)(ii) CTMR as defined by the Court in the Philips/Remington decision (<sup>2</sup>) are fulfilled or not.

- b) applied the wrong criteria in the identification of the essential characteristics of a three-dimensional trade mark; and
- c) applied an incorrect functionality test in that it i) did not limit its assessment to the essential characteristics of the trade mark at issues and, ii) did not define the appropriate criteria for assessing whether a characteristic of a shape is functional and, in particular, refused to take into account any potential alternative designs.

(<sup>1</sup>) OJ L 11, p. 1.

(<sup>2</sup>) Case C-299/99 Philips [2002] ECR I-5475.

**Appeal brought on 2 February 2009 by Lego Juris A/S against the judgment of the Court of First Instance (Eighth Chamber) delivered on 12 November 2008 in Case T-270/06 Lego Juris A/S v Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM), Other party before the Board of Appeal, intervener before the Court of First Instance Mega Brands, Inc.**

(Case C-48/09 P)

(2009/C 82/34)

Language of the case: English

#### Parties

**Appellant:** Lego Juris A/S (represented by: V. von Bomhard, Rechtsanwältin, T. Dolde, A. Renck, Rechtsanwälte)

**Other parties to the proceedings:** Office for Harmonisation in the Internal Market (Trade Marks and Designs), Megabrand, Inc.

#### Form of order sought

The appellant claim that the Court should:

- set aside the judgment of the Court of First Instance, because it violates Article 71(1)(e)(ii)CTMR (<sup>1</sup>)

#### Pleas in law and main arguments

The appellant submits that the contested judgment infringes art. 7(1)(e)(ii) of the Community Trade Mark Regulation. The appellant maintains that the Court of First Instance:

- a) interpreted art. 7(1)(e)(ii) CTMR in such a way as to effectively preclude any shape which performs a function from

**Action brought on 4 February 2009 — Commission of the European Communities v Ireland**

(Case C-50/09)

(2009/C 82/35)

Language of the case: English

#### Parties

**Applicant:** Commission of the European Communities (represented by: P. Oliver, C. Clyne, J.-B. Laignelot, Agents)

**Defendant:** Ireland

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

- declare that by failing to transpose Article 3 of Council Directive 85/337/EEC (<sup>1</sup>) on the assessment of the effects of certain public and private projects on the environment as amended;
- declare that by failing to ensure that, where Irish planning authorities and the Environmental Protection Agency both have decision-making powers on a project, there will be complete fulfilment of the requirements of Articles 2, 3 and 4 of that Directive;
- declare that by excluding demolition works from the scope of its legislation transposing that Directive,  
  
Ireland has failed to fulfil its obligations under that Directive.
- order Ireland to pay the costs.

## Pleas in law and main arguments

### Failure to transpose article 3 of the directive

The Commission submits that Section 173 of the Planning and Development Regulations 2000, which requires planning authorities to have regard to the environmental impact statement (EIS) and information coming from consultees, relates to the duty under art. 8 of the directive to take into consideration information gathered pursuant to arts. 5, 6 and 7 of the directive. In the Commission's view Section 173 does not correspond to the wider duty under art. 3 of the directive to ensure that an environmental impact assessment (EIA) identifies, describes and assesses all the matters referred to in that provision.

As for Articles 94, 108 and 111 and Schedule 6 of the Planning and Development Regulations 2001, the Commission makes the following observations. Art. 94 read with Schedule 6.2(b) sets out the information that an EIS must contain. This is a reference to the information that the developer must provide pursuant to art. 5 of the directive; it is therefore to be distinguished from the EIA which is the overall assessment process. Arts. 108 and 111 require planning authorities to consider the adequacy of an EIS. The Commission considers that these provisions relate to Art. 5 of the directive but are not a substitute for a transposition of art. 3 of the directive. The information to be provided by a developer is only one part of an EIA and provisions concerning such information are not a substitute for the obligation set out in art. 3.

### Failure to require proper coordination between authorities

Although the Commission has no objection in principle to multi-stage decision-making or to decision-making responsibility for the same project being divided between different decision-makers, it does have concerns relating to the precise manner in which duties on different decision-makers are framed. In the Commission's view Irish legislation contains no obligation on decision-makers to coordinate with each other effectively and is, therefore, contrary to articles 2, 3 and 4 of the directive.

### Failure to apply the directive to demolition works

The Commission takes the view that, where the other conditions set out in the directive are fulfilled, an EIA must be carried out for demolition works. Ireland purported to exempt nearly all demolition works by the Planning and Development Regulations 2001 (Schedule 2, part I, Class 50). In the Commission's submission, this is plainly at variance with the directive.

(<sup>1</sup>) OJ L 175, p. 40.

**Appeal brought on 3 February 2009 by Barbara Becker against the judgment of the Court of First Instance (First Chamber) delivered on 2 December 2008 in Case T-212/07 Harman International Industries, Inc. v Office for Harmonisation in the Internal Market (Trade Marks and Designs)**

(Case C-51/09 P)

(2009/C 82/36)

Language of the case: English

## Parties

**Appellant:** Barbara Becker (represented by: P. Baronikians, A. Hofstetter, Rechtsanwälte)

**Other parties to the proceedings:** Harman International Industries, Inc., Office for Harmonisation in the Internal Market (Trade Marks and Designs)

## Form of order sought

The appellant claims that the Court should order:

- annulment of § 1 of the Court of First Instance's decision of 2 December 2008 (Case T-212/07), by which the decision of the First Board of Appeal of 7 March 2007 (Case R-502/2006-1) was annulled;
- annulment of § 3 of the Court of First Instance's decision of 2 December 2008;
- order that the defendant pays the appellant's costs incurred in the entire proceedings.

## Pleas in law and main arguments

The appellant submits that the Court of First Instance erred in finding that there was similarity between the trademark 'Barbara Becker' applied for by the appellant and the defendant's mark 'BECKER', and therefore misapplied article 8(1)(b) CTMR in concluding that there was likelihood of confusion.

**SUPREME COURT  
JUDICIAL REVIEW**

Appeal No 59. of 2010

Appeal No. 60 of 2010

*Date 2010*

BEFORE

The Chief Justice

Mr Justice Hardiman

Mrs Justice Macken

Mr Justice Finnegan

Mr Justice Budd

BETWEEN

PETER SWEETMAN

APPELLANT

AND

IRELAND, THE ATTORNEY GENERAL AND THE MINISTER FOR THE  
ENVIRONMENT, HERITAGE AND LOCAL GOVERNMENT

APPELLANTS

AND

AN BORD PLEANÁLA

RESPONDENT

GALWAY COUNTY COUNCIL  
GALWAY CITY COUNCIL

NOTICE PARTIES

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ORDER FOR REFERENCE TO THE  
COURT OF JUSTICE OF THE EUROPEAN UNION PURSUANT TO  
ARTICLE 267 OF THE TREATY

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## SECOND SCHEDULE

### TEXT OF QUESTIONS DRAFTED BY IRELAND, THE ATTORNEY GENERAL AND THE MINISTER FOR THE ENVIRONMENT, HERITAGE AND LOCAL GOVERNMENT

In light of these arguments, the Court has decided to refer to the Court of Justice of the European Communities pursuant to Article 267(3) of the Treaty on the Functioning of the European Union the following questions:

1. Does the permanent loss of an area of Annex I priority habitat type constitute “deterioration” within the meaning of Article 6(2) of Directive 92/43<sup>1</sup>? If the answer to this question is “yes”, can a plan or project involving such a permanent loss be authorised other than pursuant to the provisions of Article 6(4) of the Habitats Directive?
2. Are there any circumstances in which the permanent loss of an area of Annex I habitat type can be considered not to adversely affect the integrity of the site concerned? In particular, does Article 6(3) of Directive 92/43 admit of a *de minimis* exception, whereby the permanent loss of an area of Annex I priority habitat type can be authorised by reference to the continued existence of the habitat type elsewhere within the site. If the answer to these questions is “yes”, does a finding that the permanent loss has a “significant effect” preclude the application of any *de minimis* exception?
3. Must the permanent loss of a habitat type for which a site has been designated be considered as having negative implications for the conservation objectives of the site? If so, can a plan or project involving such a loss be authorised other than pursuant to the provisions of Article 6(4) of Directive 92/43?

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<sup>1</sup> Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora (OJ 1992 L 206, p. 7) as amended

PETER SWEETMAN & MONICA MULLER  
ROSSPORT SOUTH  
BALLINA  
COUNTY MAYO  
[sweetmanplanning@gmail.com](mailto:sweetmanplanning@gmail.com)

The Secretary  
An Bord Pleanála  
64 Marlborough Street  
Dublin 1.  
30.08.2010.

[bord@pleanala.ie](mailto:bord@pleanala.ie)

Re: GA0005 Shell E & P Ireland Ltd.

Dear Sir/Madam,

The Consent under Section 40 of the Gas Act 1976 as amended granted by Minister Fahey to Shell E & P Ireland in April of 2002, subject to Environmental Impact Assessment, is a consent in principle which contained conditions precedent. The European Courts of Justice has found that a valid Environmental Impact Assessment consent cannot contain conditions precedent.

As it is our submission that no Environmental Impact Assessment as required by Article 3 of the EU Directive 85/337/EEC as amended by 97/11EC and 2003/35/EC has ever been carried out on the offshore pipeline and in particular on the construction compound and breach of the cliff at Glengad and as there is no facility in the Environmental Impact Assessment Directive for the carrying out of a post-construction assessment neither the Minister nor Bord Pleanala has any grounds on which either can legally grant a consent to the current application for a Pipeline Consent, either pursuant to Section 40, Gas Act or the Planning Acts.

Shell installed and constructed a section of the (originally) consented gas pipeline, from the proposed LVI to the wellhead under the 2002 Section 40 consent, which Consent includes the requirement to comply with all plans, drawings, specifications and conditions attached. This has not been done.

The installed pipeline was not constructed within the terms and restrictions of the Rules and Procedures Manual for Offshore Petroleum Production Operations.

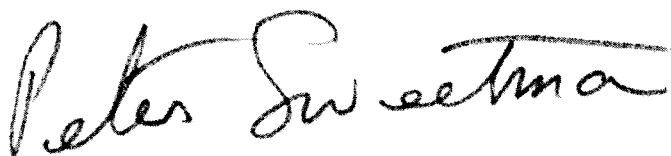
We have been informed that a significant addendum to the EIS has been submitted to the Minister, this addendum and the data supporting the conclusions must be circulated to the public concerned for comment.

The installed pipeline was not constructed as per the Foreshore Licence, as the "Landfall" is described in the Foreshore Licence as being situate at "81469 E" - "336301 N". The Map titled FORESHORE LICENCE OVERALL ROUTE dated 30.1.02, Number 05 2102 02 P 0 199 02 states that these "Coordinates given are to define the foreshore routing."

We also attach to this submission the Stated Question from the Supreme Court to the European Courts of Justice concerning the interpretation of the Habitats Directive, which Stated Question was proposed and supported both by the State and myself.

In addition to the above it is our submission that no Assessment which would have complied with Article 3 of European Directive 85/337/EEC as amended by Directives 97/11/EC and 2003/35/EC/EEC has been and never was, carried out. We attach extract from the Official Journal of the European Union issue C 82/19 which specifically describes the Cases currently before the ECJ against Ireland and which Cases are specifically "on point" with the issues raised in this letter relating to the Corrib Gas Project and, in particular, the Pipeline proposed to connect to and connecting the Wellheads to the Terminal/refinery .

Yours faithfully



Peter Sweetman and on behalf of Monica Muller

Attached:

Judgement in Case C-66/06 of the European Courts of Justice  
Extract from the Official Journal of the European Union C 82/19  
Copy letters to  
EPA  
Minister For Environment Heritage and Local Government.  
Minister for Communications, Energy and Natural Resources  
Stated Question to the European Courts of Justice

PETER SWEETMAN & MONICA MULLER  
ROSSPORT SOUTH  
BALLINA  
COUNTY MAYO  
[sweetmanplanning@gmail.com](mailto:sweetmanplanning@gmail.com)

Department Minister of CENR  
Petroleum Affairs Section  
Adelaide Road  
Dublin 2

30.08.2010.

[minister@dcenr.gov.ie](mailto:minister@dcenr.gov.ie)

[orla.ryan@dcenr.gov.ie](mailto:orla.ryan@dcenr.gov.ie)

Re: Corrib Gas Project: Section 40 Gas Act Consent : Onshore & Offshore & EIA  
Habitats Directive, Birds Directive and EIA Directive

Dear Sir/Madam,

The Consent under Section 40 of the Gas Act 1976 as amended granted by Minister Fahey to Shell E & P Ireland in April of 2002, subject to Environmental Impact Assessment, is a consent in principle which contained conditions precedent. The European Courts of Justice has found that a valid Environmental Impact Assessment consent cannot contain conditions precedent.

As it is our submission that no Environmental Impact Assessment as required by Article 3 of the EU Directive 85/337/EEC as amended by 97/11EC and 2003/35/EC has ever been carried out on the offshore pipeline and in particular on the construction compound and breach of the cliff at Glengad and as there is no facility in the Environmental Impact Assessment Directive for the carrying out of a post-construction assessment the Minister has no grounds on which he can legally grant a consent to the current application for a section 40 consent.



Shell installed and constructed a section of the originally consented gas pipeline, from the proposed LVI to the wellhead under the 2002 Section 40 Consent, which Consent includes the requirement to comply with all plans, drawings, specifications and conditions attached. This has not been done.

The installed pipeline was not constructed within the terms and restrictions of the Rules and Procedures Manual for Offshore Petroleum Production Operations.

We have been informed that a significant addendum to the EIS has been submitted to the Minister, this addendum and the data supporting the conclusions must be circulated to the public concerned for comment.

The installed pipeline was not constructed in accordance with the terms of the Foreshore Licence as the Landfall is described in the Foreshore Licence as "81469 E" & "336301 N". The Map titled FORESHORE LICENCE OVERALL ROUTE dated 30.1.02, Number 05 2102 02 P 0 199 02 states that these "Coordinates given are to define the foreshore routing."

We also attach to this submission the Stated Question from the Supreme Court to the European Courts of Justice concerning the interpretation of the Habitats Directive, which Stated Question was proposed and supported both by the State and myself.

In addition to the above it is our submission that no Assessment which would have complied with Article 3 of European Directive 85/337/EEC as amended by Directives 97/11/EC and 2003/35/EC/EEC has been and never was, carried out. We attach extract from the Official Journal of the European Union issue C 82/19 which specifically describes the Cases currently before the ECJ against Ireland and which Cases are specifically "on point" with the issues raised in this letter relating to the Corrib Gas Project and, in particular, the Pipeline proposed to connect to and connecting the Wellheads to the Terminal/refinery .

Yours faithfully



Peter Sweetman and on behalf of Monica Muller

Attached:

Judgement in Case C-66/06 of the European Courts of Justice



Extract from the Official Journal of the European Union C 82/19  
Copy letters to  
An Bord Pleanála  
Minister For Environment Heritage and Local Government.  
Environmental Protection Agency  
Stated Question to the European Courts of Justice

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PETER SWEETMAN & MONICA MULLER  
ROSSPORT SOUTH  
BALLINA  
COUNTY MAYO  
[sweetmanplanning@gmail.com](mailto:sweetmanplanning@gmail.com)

Department of EHLG  
Customs House  
Dublin 1

[foreshore@environ.ie](mailto:foreshore@environ.ie)

[minister@environ.ie](mailto:minister@environ.ie)

31.08.2010.

Re: Corrib Gas Project: Section 40 Gas Act Consent : Onshore & Offshore & EIA  
Habitats Directive, Birds Directive and EIA Directive

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Dear Sir/Madam,

The Consent under Section 40 of the Gas Act 1976 as amended granted by Minister Fahey to Shell E & P Ireland in April of 2002, subject to Environmental Impact Assessment, is a consent in principle which contained conditions precedent. The European Courts of Justice has found that a valid Environmental Impact Assessment consent cannot contain conditions precedent.

As it is our submission that no Environmental Impact Assessment as required by Article 3 of the EU Directive 85/337/EEC as amended by 97/11EC and 2003/35/EC has ever been carried out on the offshore pipeline portion of this Project and in particular on the construction compound and breach of the cliff at Glengad: as there is no facility in the Environmental Impact Assessment Directive for the carrying out of a post-construction assessment the Minister has no grounds on which he can legally grant a consent to the current application for a section 40 consent for the Pipeline.

Shell installed and constructed a section of the (originally) consented gas pipeline, from the proposed LVI to the wellhead under the 2002 Section 40 consent which includes the requirement to comply with all plans, drawings, specifications and conditions attached. This has not been done.

The installed pipeline was not constructed within the terms and restrictions of the Rules and Procedures Manual for Offshore Petroleum Production Operations.

We have been informed that a significant addendum to the EIS has been submitted to the Minister: this addendum and the data supporting the conclusions must be circulated to the public concerned for comment.

The installed pipeline was not constructed as per the Foreshore Licence, as the "Landfall" is described in the Foreshore Licence as being situate at "81469 E" - "336301 N". The Map titled FORESHORE LICENCE OVERALL ROUTE dated 30.1.02, Number 05 2102 02 P 0 199 02 states that these "Coordinates given are to define the foreshore routing."

We also attach to this submission the Stated Question from the Supreme Court to the European Courts of Justice concerning the interpretation of the Habitats Directive, which Stated Question was proposed and supported both by the State and myself.

In addition to the above it is our submission that no Assessment which would have complied with Article 3 of European Directive 85/337/EEC as amended by Directives 97/11/EC and 2003/35/EC/EEC has been and never was, carried out. We attach extract from the Official Journal of the European Union issue C 82/19 which specifically describes the Cases currently before the ECJ against Ireland and which Cases are specifically "on point" with the issues raised in this letter relating to the Corrib Gas Project and, in particular, the Pipeline proposed to connect to and connecting the Wellheads to the Terminal/refinery .

Yours faithfully



Peter Sweetman and Monica Muller

Attached:

Judgement in Case C-66/06 of the European Courts of Justice  
Extract from the Official Journal of the European Union C 82/19  
Copy letters to:  
An Bord Pleanála  
Minister For Communications, Energy and Natural Resources  
Environmental Protection Agency  
Stated Question to the European Courts of Justice

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