



Submission

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| Submitter: | Mr. David Malone |
| Organisation Name: | Environmental Action Alliance - Ireland |
| Submission Title: | Rec'd by email |
| Submission Reference No.: | S011640 |
| Submission Received: | 04 July 2024 |

Application

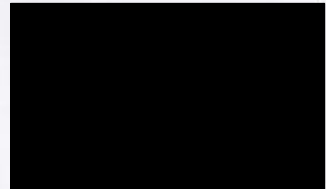
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| Applicant: | GCHL LIMITED |
| Reg. No.: | W0298-01 |

See below for Submission details.

Attachments are displayed on the following page(s).



Licence Department,
Environmental Protection Agency,
PO Box 3000,
Johnstown Castle Estate,
Wexford.



4 July 2024

Re: GCHL Waste Licence Application W0298-01

The following is a further submission by Environmental Action Alliance -Ireland (EAA-I) concerning the waste licence application W0298-01.

The Court of Justice of the European Union (CJEU) Cases C-50/09, ruled that Ireland had failed to correctly transport Articles 2-4 of the EIA Directive and in Case C-215/06 ruled that Ireland failed to correctly transport Articles 2(1), 4(1) and (2) of the EIA Directive. The European Commission informed the Applicant of the new legislation adopted by Ireland to implement the judgement in case C-50/09 **requires that a planning application must precede an application for a license with the Agency.** (copy of letter from Commission attached)

Case C-50/09 ruled that the Agency was infringing Articles 2 to 4 of the EIA Directive, as amended by the Public Participation Directive 2003/35/EC, **by processing waste licence applications prior to a planning application being submitted to the relevant planning authority.**

In May 2024, I sought "*Clarification of Supremacy of EU law*" from the European Commission. The Commission's reply on 28 May 2024 stated that following the CJEU judgement in Case C-50/09, Ireland amended its national legislation transposing the EIA Directive to remedy the breach found. As a result, the decision-making process involving multiple authorities under the EIA Directive should be in compliance with EU law.

The European Commission also stated that the amendments introduced by EIA Directive 2014/52/EU have taken on board the abovementioned case law. However, if there is evidence that the national regime currently in place in Ireland is not conforming with the judgement in case C-50/09, it would be grateful to receive details of the breach you have identified. *(copy of European Commission reply attached)*

Email: [Redacted]

Mobile: [Redacted]

I have sent the European Commission a copy of the letter from the Agency, dated 9 August 2023, which states that it had not carried out a screening to ensure compliance with section 87(1B) of the EPA Act 1992, as amended and section 42(1B) of the Waste Management Act 1996, as amended. This is clear evidence that the Agency is infringing Articles 2-4 of the EIA Directive 2014/52/EU by not conforming with the CJEU judgement in Case C-50/09.

I also sent the Commission a copy of a reply from An Bord Pleanála confirming that there was no EIA carried out under Article 3 of the EIA Directive and no Natura Impact Assessment carried out, in accordance with Article 6 of the Habitats Directive for PL.09.226718. The CJEU in case C-50/09, ruled that Ireland had not transposed Article 3 of the EIA Directive. Accordingly, the Agency in processing the waste licence for PL.09.226718 is infringing Article 3 of the EIA Directive 2014/52/EU.

Paragraph 177 of the High Court judgement in *Harte Peat Ltd v EPA* [2022] IEHC 148, Ms. Justice Siobhán Phelan states that section 87(1C) obliged the Agency to refuse to consider an application that does not comply with section 87(1B). The Court found that the Agency was correct in its conclusion **that it could not consider the application under section 87(1C) of the EPA Act 1992 in the absence of evidence of planning permission.**

The CJEU judgement in case C-50/09 and Ms. Justice Phelan's judgement in *Harte Peat Ltd v EPA* and the European Commission's letter to the Applicant in March 2014 all confirm that the Agency is prohibited from **processing a waste licence application prior to a planning application been submitted to the relevant planning authority.**

On 29 February 2024, the Court of Justice of the European Union (CJEU) imposed a lump sum fine of €2.5 million against Ireland for failure to notify the full implementation of the revised Audiovisual Media Services Directive (AVMSD) into Irish law. The Court also imposed daily fines of €10,000 from the date of judgement until the AVMSD is fully transposed.

Accordingly, the CJEU could imposed a lump sum fine of €2.5 million against Ireland for failure to implement the CJEU judgements in Cases C-50/09 and C-215/05 and imposed daily fines of €10,000 from the date of judgment (March 2011) until Ireland (in this case the Agency) implements the judgements which would be more than €40 Million.

In other words, the CJEU will find Ireland over €40 Million because the Agency failed to implement

Yours sincerely,

David Malone

David Malone
Eurolaw Environmental Consultant



EUROPEAN COMMISSION
DIRECTORATE-GENERAL
ENVIRONMENT
Directorate E – Compliance, Governance & Support to Member States
The Director (acting)

Brussels
ENV.E.3/SG

Mr David Malone
[REDACTED]

Subject: Clarification of Supremacy of EU law

Dear Mr Malone,

Your email of 17 March 2024 addressed to Commissioner McGuinness has been passed to my Directorate for reply.

In your email, you ask about the legal landscape in Ireland following the judgment of the Court of Justice of European Union on 3 March 2011 in Case C-50/09, *Commission v. Ireland*. Following that judgment, Ireland amended its national legislation transposing the EIA Directive to remedy the breach found. As a result, the decision-making process involving multiple authorities under the EIA Directive should be compliant with EU law. In addition, the amendments introduced by Directive 2014/52/EU ⁽¹⁾ have taken on board the abovementioned case-law.

It should not therefore be necessary for an Irish citizen to have to rely on the rule of consistent interpretation in a case where the EIA Directive applies to a project undergoing development consent. However, if there is evidence that the national regime currently in place in Ireland is not conform with the judgment in case C-50/09, we would be grateful to receive details of the breach you have identified.

Yours faithfully,

Paul Speight

⁽¹⁾ Directive 2014/52/EU of the European Parliament and of the Council of 16 April 2014 amending Directive 2011/92/EU on the assessment of the effects of certain public and private projects on the environment (<https://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1399014880090&uri=CELEX:32014L0052>).



EUROPEAN COMMISSION
DIRECTORATE-GENERAL ENVIRONMENT
Directorate D – Implementation, Governance and Semester
ENV.D.3 – Enforcement, Cohesion Policy and European Semester, Cluster 3
Head of Unit

Brussels, 06. 03. 2014
ENV D3/AIS/ad/ARES(2014) 601409

MR DAVID/MALONE
60 ST JOSEPH'S TERRACE
PORTARLINGTON
COUNTY OFFALY
IRELAND

Dear Mr David Malone,

Subject: Complaints nr. 2000/4002, 2000/4793, 2002/4311 and 2003/4203 concerning a proposed pig-rearing installation at Stradbally, County Waterford, a proposed landfill facility at Bottlehill, County Cork, a proposed landfill at Ballinhistle, County Galway and application of the EIA Directive

I refer to your complaints registered under the references SG (2000)A/00138, SG (2000)A/10892, SG (2002)A/02671 and SG (2003)A/01946 concerning a proposed pig-rearing installation at Stradbally, County Waterford, a proposed landfill facility at Bottlehill, County Cork, a proposed landfill at Ballinhistle, County Galway and the application of Directive 85/337/EEC, as amended (and now codified in Directive 2011/92/EU) on the assessment of the effects of certain public and private projects on the environment. Your original complaints were taken up in the context of an infringement action that the Commission brought against Ireland addressing a range of issues concerning the transposition of Directive 85/337/EEC. On 3 March 2011, the European Court of Justice delivered a judgment in case C-50/09 *Commission v Ireland*.

With this letter I would like to inform you that the Commission closed the infringement case against Ireland on 30 May 2013 after Ireland put in place all the measures to implement that judgment.

I note that your complaints related to issues that were addressed in the first and second grounds of the judgment. For your information, please find below a list of measures that Ireland put in place to address those parts of the judgment.

In order to implement the first ground of the judgment, in 2012 and at the beginning of 2013, Ireland adopted a number of legislative amendments in order to fully transpose the requirements of Article 3 of the EIA Directive with respect to the following sectors: planning, aquaculture, aquaculture appeals, arterial drainage, flood risk management, gas and petroleum, foreshore, forestry. The relevant legislative acts are listed below.

European Commission, B-1049 Brussels - Belgium. Telephone: (32-2) 298 11 11. Office: BU-5 2/184. Telephone: direct line: (32-2) 296 4135. Fax: (32-2) 2979689. E-mail: paul.speight@ec.europa.eu

- European Union (Environmental Impact Assessment) (Gas) Regulations 2012 (S.I. No. 403 of 2012)
- European Union (Environmental Impact Assessment) (Petroleum) Regulations 2012 (S.I. No. 404 of 2012)
- European Union (Environmental Impact Assessment) (Aquaculture) Regulations 2012 (S.I. No. 410 of 2012)
- European Union (Environment Impact Assessment) (Planning and Development Act 2000) Regulations 2012 (S.I. No. 419 of 2012)
- European Union (Environmental Impact Assessment) (Foresore) Regulations 2012 (S.I. No. 433 of 2012)
- European Communities (Forest Consent and Assessment) (Amendment) Regulations 2012 (S.I. No. 442 of 2012)
- European Union (Environmental Impact Assessment) (Aquaculture Appeals) Regulations 2012 (S.I. No. 468 of 2012)
- European Union (Environmental Impact Assessment) (Arterial Drainage) Regulations 2012 (S.I. No. 469 of 2012)
- European Union (Environmental Impact Assessment) (Flood Risk) Regulations 2012 (S.I. No. 470 of 2012)
- European Communities (Environmental Impact Assessment) (Agriculture) (Amendment) Regulations 2013 (S.I. No. 142 of 2013)

Ireland's national legislation now properly transposes the requirements of Articles 2 and 3 of the Directive in relation to all the consent systems.

In addition, on 28 March 2013 the Department of the Environment, Community and Local Government published Guidelines for Planning Authorities and An Bord Pleanála on carrying out an environmental impact assessment explaining the implications of the new provisions. These were distributed to all planning authorities and the Environmental Protection Agency.

In order to implement the second ground of the judgment, in 2012 Ireland adopted legislative amendments to the Waste Management Act 1996, the Planning and Development Act 2000, the Environmental Protection Agency Act 1992. The relevant legislative acts are listed below.

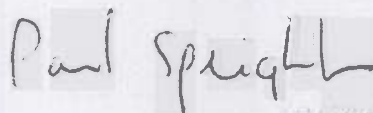
- European Union (Environment Impact Assessment) (IPPC) Regulations 2012 (S.I. No. 282 of 2012)
- European Union (Environment Impact Assessment) (Waste) Regulations 2012 (S.I. No. 283 of 2012)

The new provisions now require that a planning application must precede an application for a license with the Agency, that the Planning authorities and the Agency must cooperate in issuing development consent and that the Agency is required to carry out an environmental impact assessment (where required under the Directive) and to coordinate that with the local planning authority.

In addition, on 27 August 2012, the Department of the Environment, Community and Local Government issued a Circular letter to all planning authorities explaining how the liaison between the EPA and the planning authorities or An Bord Pleanála is to work, following the introduction of the above Regulations.

Your complaints referred to a situation that took place under the old legislation. This legislation has now been amended to comply with the requirements of the Directive. On that basis your complaint files were closed on 30 May 2013. If you consider that EU environmental law is being infringed under the new legislation, please feel free to contact me again.

Yours sincerely,

A handwritten signature in black ink that reads "Paul Speight". The signature is written in a cursive style with a long horizontal stroke at the end.

Paul Speight