



Submission

Submitter:	Mr. David Malone
Submission Title:	Submission
Submission Reference No.:	S011654
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Application

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

See below for Submission details.

Attachments are displayed on the following page(s).

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60 St. Joseph's Terrace,
Portarlinton,
County Offaly.

IMPEL Network
Chemin des deux maisons 73,
box 3 1200,
Brussels
Belgium

8 July 2024

Re: Complaint against Environmental Protection Agency in Ireland

Dear Sir/Madam,

Between 2000 and 2003 (over 20 years ago), I registered four complaints with the European Commission concerning a failure by the Irish planning authorities and the Environmental Protection Agency (the Agency) that when both having decision-making powers on a project, there will be complete fulfilment of the requirements of Articles 2 to 4 of the EIA Directive. The complaints resulted in the Commission taking Ireland to (CJEU) in Case C-50/09.

The Court of Justice of the European Union (CJEU) in judgement C-50/09, ruled that the Agency in processing a waste licence application **prior to a planning application being submitted to the relevant planning authority** was an infringement of Articles 2 to 4 of the EIA Directive, as amended by the Public Participation Directive 2003/35/EC.

On 6 March 2014, the European Commission informed me of the new legislation transposed into Irish law to implement the judgement in Case C-50/09. The letter states that in 2012 Ireland adopted legislative amendments to the Waste Management Act 1996, the Planning and Development Act 2000 and the EPA Act 1992. The letter states that **the new provisions now require that a planning application must precede an application for a license with the Agency.** (copy of letter from European Commission attached)

The Agency for the past 5 years is processing a waste licence application (Ref: W0298-01) for a company called GCHL Ltd to dispose of over 1.2 Million tonnes of waste licence at its unauthorised quarry at Ballinderry, Carbury, Co. Kildare. The Agency was cited 32 times in CJEU judgement and was involved in a High Court judgement in Harte Peat Ltd v EPA [2022] IEHC 148. This judgement upheld the CJEU judgement in Case C-50/09.

In Harte Peat Ltd v EPA, 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.** (Para 177)

The Agency who is a member of the European Union Network for the Implementation and Enforcement of Environmental Law (IMPEL) is under investigation by the European Commission for violations of CJEU judgements in Cases C-50/09 and C-215/06.

In this regard, 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)*

I sent the European Commission a copy of the letter from the Agency, dated 9 August 2023, stating 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. *(a copy of letter from the Agency is attached).*

If the Commission decides to take Ireland back to CJEU because of the Agency’s failure to implement the legislation adopted by the EU institutions under Article 288 of the Treaty on the Functioning of the European Union (TFEU) to give effect to the EIA Directive as amended by the Public Participation Directive following the CJEU judgements in Cases C-50/09 and C-215/06, the CJEU will impose a lump sum fine of €2.5 million against Ireland for failure to implement the CJEU judgement in Cases C-50/09 and C-215/06 and imposed a daily fines of €10,000 from the date of judgement (March 2011) until Ireland (the Agency) implements the judgement. In other words, the CJEU will find Ireland over €47 Million because the Agency failed to implement CJEU judgement.

IMPEL cannot justify one of its members failing to implement the legislation adopted by the EU institutions under Article 288 of the Treaty on the Functioning of the European Union (TFEU) to give effect to the EIA Directive as amended by the Public Participation Directive following the CJEU judgements in Cases C-50/09 and C-215/06.

Accordingly, I am requesting that the Agency’s membership of IMPL be terminated on the grounds that it undermines the fundamental objective of IMPL.

Yours sincerely,

David Malone

David Malone

EuroLaw Environmental Consultant