Do The Chickens Come Home to Roost?

Can eNGOs seize opportunities to effect change through ECJ Environmental judgments against Ireland?

It is no coincidence that Friends of the Irish Environment came together in 1997, the year that the Habitats Directive Regulations were implemented in Ireland.

Those of us who gathered together in the Library of the Central Hotel in Dublin believed at that time that European Law was about to give us what national law had failed to do – an effective legal regime that would protect our environment from ill-considered development-driven projects and plans and ensure access to redress when this failed.

There have been many analyses of what the judgments of the European Court of Justice [ECJ] say. There has, perhaps, been less attention given to how effective the rulings of the Court have been.

Each of the key Judgments which we will look at today have arisen only through the complaints of citizens and NGOs as only the Commission can bring cases directly to the Courts.¹

Under the current procedures, a complainant’s letter is first entered in the PILOT database and communicated directly with the Member State with the object of seeking a resolution at national level².

Ludwig Kramer writes of this new system:

‘With this Communication, the environmental complaint seems to die a rather silent death. Indeed, if one looks back at twenty years of existence of this instrument, the Commission has made a full circle: from the “guarantee” that environmental complaints would be investigated by its services, it has reached the conclusion that complaints—the 2008 Communication speaks of “cases”—would immediately be communicated to the Member States concerned.’³

The Commission puts it this way:

‘In this respect, the Commission must point out that, in accordance with the established case-law of the Court of Justice, it enjoys a discretionary power in deciding whether or not to commence infringement proceedings and to refer a case to the Court. The Court has also acknowledged the Commission’s power to decide at its own discretion when to commence an action.’⁴

¹ In 15 March 2011 draft findings published by the Aarhus Convention Compliance Committee confirmed NGO ClientEarth’s arguments and found that the EU must “take steps to overcome the shortcomings reflected in the jurisprudence of the EU courts in providing the public concerned with access to justice on environmental matters.” http://www.clientearth.org/un-says-eu-courts-must-mend-access-to-justice-rules-to-meet-international-law
² The Commission has established a pilot problem-solving mechanism with 15 Member States to test how it can respond better to citizens’ inquiries concerning the application of EC law. Any environment cases will be promptly transmitted to Member States taking part in the pilot project. Member States will be encouraged to apply the best practice emerging from individual cases on a broader basis. Commission, Implementing European Community Environmental Law, COM (2008) 773 of 18 November 2008.
³ Quoted by Prof. Dr. Ludwig Krämer, The environmental complaint in EU law, JEEPL 6.1 (2009) 13–35
⁴ http://ec.europa.eu/eu_law/infringements/infringements_en.htm
If the complaint does not meet Kramer’s ‘silent death’, the audience here will probably be familiar with the formal legal steps that can follow under 258 of TFEU [the Treaty on the Functioning of the EU]. A decision by the Secretary General; a Letter of Formal Notice/Warning Letter; failing a satisfactory resolution, a Reason Opinion (increasingly optional); and finally a judgment of ECJ.

The average time for this process is 4 years. Generally speaking, a member state is then given at least two years to comply. Where this has not happened, the Commission must begin the process again seeking daily fines under 260 of TFEU. If the Commission is satisfied with the subsequent compliance, the new proceedings can be withdrawn. If not, the Court may impose lump or daily fines.

Ireland leads the dubious league of those Member States being brought before the ECJ to face fines for failure to meet judgments. Ireland has 14 cases, followed by Italy’s 9 cases and Greece’s 8 cases. As Andrew Jackson summarises ‘Ireland was the worst performer by some distance in terms of meeting its obligations after a breach had been confirmed by the ECJ.’

Until I began to prepare this presentation, I had no idea of the number of environmental issues that have been covered by ECJ judgments against Ireland. Nor did I appreciate the number or commitment of Irish NGOs who were involved both in the complaints procedures or in the pursuit of the requirements of the judgements – which turn out to be the opposite side of the same coin. They have my thanks for the information they have provided, my apologies for any mistakes and the limitations that today’s format imposes.

Case 427/07 - Costs
Some cases bring back the warning that you must be careful what you wish for.

While we still await the ratification of the Aarhus Convention with its promise of access to justice, Directive 2003/35/EC should have addressed the personal liability for the huge costs that arises under our adversarial system legal system as well as the frightening potential damages for delaying major projects.

The European Court noted in Case 427/07, ‘in relation to costs, there is no applicable ceiling as regards the amount that an unsuccessful applicant will have to pay, as there is no legal provision which refers to the fact that the procedure will not be prohibitively expensive.’

In response to this judgment, at the last moment in the legislative process, Ireland inserted Section 50b in the Planning and Development (Amendment) Act 2010: ‘Notwithstanding anything contained in Order 99 of the Rules of the Superior Courts and subject to subsections (3) and (4), in proceedings to which this section applies, each party (including any notice party) shall bear its own costs.’

It was all very well to protect a litigant from the crushing costs of the other side. But now costs even if a case is won can not be recouped by the litigant unless he

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5 Based on the most recently available figures provided by the European Commission covering the period to the end of 2009, we ranks 3rd for ongoing environmental infringement cases with 34 live cases.

6 In this chicken watching I am much indebted to Andrew Jackson, one of our group who closely monitors legal cases against Ireland and maintains a table on our website for the public.

7 Article 10a of Directive 85/337/EC on environmental impact assessment (EIA)
is able to meet an almost impossibly high set of hurdles that serve only to reinforce the barriers to justice - the matter must be of "Public Importance" AND there must be "Special Circumstances" AND it must be "in the Interests of Justice" to make such an award of Costs.

The removal of ability to recover costs no longer makes it possible for legal teams to take on cases on a "pro bono" basis with recovery of costs being dependent on a successful judgment and cost award in their favour.

One of the key results, then, from the judgment in Case 427/07 was to make it less likely for us to bring Judicial Reviews – exactly the opposite to what the Directive intended and the complainants sought.  

Our organisation did a survey of other ENGOs who belong to the European Environmental Bureau, and found that, the cost of taking cases was seldom more than €5,000.

In the Netherlands, even a lawyer is not necessary. As the EEB law-list member wrote:

"This type of appeal is considered part of a government re-evaluation of a case that should be made without much cost to citizens. They have a right to sound decision making and are already paying taxes for that. The court are expected to distil the legal merits of the case on the basis of the arguments made by ‘lay’ persons – with a sufficient interest, like NGOs - and if necessary make its own research of the facts." 

C183/05 –Conditions precedent and default permission

In C183/05 against Ireland, the ECJ ruled on 11 January 2007 that development applications in Ireland affecting habitats and species were being determined by local authorities and An Bord Pleanala without the level of data required at consent stage.

Despite this judgement and the subsequent issue of a circular letter 1/08 by the Department of the Environment Heritage and Local Government, permissions continue to be issued on this basis.

An Bord Pleanala on 16 September 2009 gave permission to Shannon Explosives Limited for an explosives factory on the SAC designated Shannon Estuary while leaving major issues relating to site excavation, building design, ecology and landscaping to be resolved by post-consent provision of information by the developer and agreement by Clare County Council.

An Taisce requested the EU Commission to take direct action to seek the quashing of the An Bord Pleanala decision, ‘since the ECJ judgement of 17 July 2009 in Case C-427-07 has confirmed that Ireland has not put in place the direct procedural and substantive measures required under Article 10a of the revised

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8 We do not take much comfort from Dr Yvonne Scannell view that ‘Nonetheless, the case may have some influence in reducing the enormous costs of environmental litigation and in motivating the courts to be more efficient in the manner in which they are conducted’. Dr. Yvonne Scannell, Ireland Report 2010, University of Bremen http://www-user.uni-bremen.de/~avosetta/irelandreport2010.pdf
9 http://www.friendsoftheirishenvironment.net/index.php?do=library&action=view&id=140
EIA Directive to review consent decisions in Ireland at reasonable cost. ‘\(^{10}\) Nothing happened.

An Taisce itself took dramatic legal action in 2010 in a case of default permission. ‘\(^{11}\) The planning authority had not made a decision on the requested planning permission in time so the developer sought default permission and won his case in both the High Court and the Supreme Court.

Before the Supreme Court Order was perfected, An Taisce applied to the Court on the grounds that it had been wrongly excluded from the case ‘\(^{12}\) and that Section 34 which allowed default permissions was contrary to EU law. The Supreme Court agreed to stay its ruling until the mater was heard in the High Court and An Taisce was given standing in the case.

As Yvonne Scannell comments ‘This decision goes very far in ensuring respect for EU law’. ‘\(^{13}\)

C215/06 – Retention Culture

The ‘retention culture’ should have been ended by this judgment on 3rd July 2008.

An Taisce, however, has provided the Commission with a number of cases where considerations never subject to a prior EIA were approved retrospective. ‘\(^{14}\)

Ian Lumley, An Taisce’s Heritage Officer who pursued these cases, is particularly frustrated by the Board’s ruling was that cited above for the Shannon Explosives factory at Killydysert, County Clare.

On 31 January 2003 the Board had refused permission on the grounds of the lack of assessment of impact of the extraction and bringing fill material to the site in order to raise the level of the factory as objectors had provided photographs of the flooded site.

The developer then got planning permission for a quarry on the site ‘\(^{15}\) under Section 261 Planning and Development Act 2000 from Clare Co Council on the basis that it was a continuously operating pre-1964 site - in spite of documentation provided by the Salesian Order and other residents that there had never been a quarry on the site.

An Bord Pleanala then accepted the ‘registered’ quarry as meeting its requirements for regulation of the extracted material in the 2003 ruling and granted permission.

Even in cases in Kildare, Cavan, and Wicklow where An Taisce has been successful in overturning Local Authorities decisions to grant permission for

\(^{10}\) Ian Lumley, pers. comm.

\(^{11}\) Abbeydrive Developments Limited v Kildare County Council [2010] I.E.S.C

\(^{12}\) An Taisce is prescribed for consultation under the Planning Acts.

\(^{13}\) Dr. Yvonne Scannell, Ireland Report 2010, University of Bremen http://www-user.uni-bremen.de/~avosetta/irelandreport2010.pdf

\(^{14}\) These include an extension to Knock Airport. Co. Mayo (20 August, 2010) , Barrets Park Asphalt Plant, Co., Galway (23 December, 2009) , McQuaid Quarry at Clontibret in County Monahan (20 July 2009) , Barretts Quarry, Bangor Erris County Mayo (10 January 2010) .

\(^{15}\) Clare County Council QY 36
quarries\textsuperscript{16} there has been ‘no response from the relevant councils as to what action has been taken to close and remediate the unauthorised sites’. \textsuperscript{17}

[494/01] The Waste Judgment

The complaints system was nowhere more amply illustrated than in the Waste Judgment against Ireland [C-494/01].

The Commission began its case based on three complaints: the dumping of construction and demolition waste on wetlands within the area of the City of Limerick; the storage and landspreading of organic waste in lagoons in County Cork and the unauthorised storage of waste in County Wexford. As the case proceeded, 5 more complaints were received – from Carlow, Dublin, Tramore, Kilbarry [from FIE], County Waterford and Donegal. Three more complaints came in from Louth, Wicklow, and Waterford.

The Commission was this able to argue successfully that there was a ‘general and persistent’ breach of EU law – based on 11 complainants all unbeknownst to each other.

But what precisely did these cases achieve? The Commission would cite:

- completion of licensing of all local authority landfills
- the development of the Office of Environmental Enforcement’s oversight role
- closer cooperation between local authorities, the Environmental Protection Agency and the Director of Public Prosecutions;
- creation of a network of officials at national level modelled in part on the IMPEL network\textsuperscript{18} at EU level;
- funding of improved enforcement;
- adoption of enforcement policies;
- establishment of a complaint system;
- training and awareness-raising events;
- adoption of technical guidance on the cleanup of waste sites illegally transhipped waste to Northern Ireland to be repatriated.\textsuperscript{19}

The judgment sorted 11 sites. It ended a vast and lucrative criminal world of cross-border waste operators.

But our organisation’s complaints about entirely unregulated and unlicensed storage of toxic waste from the Irish Steel/Ispat operations at Haulbowline Island, County Cork has gone nowhere in more than two years. To add insult to injury, we have just been told that one of the 2009 AIE requests we made depends on

\textsuperscript{16} 09.235759 NURNEY CO KILDARE refused 24 Aug 2010
02. 231269 KILMAINHAM, CO CAVAN refused 4 Sept. 2009
27.233638 RED CROSS CO WICKLOW refused 31 Aug. 2009
\textsuperscript{17} Ian Lumley, pers. comm. An Taisce is a prescribed body for consultation under thye planning Acts, and Lumley’s work is extraordinary.
\textsuperscript{18} An EU network of national inspectors established in 1992. The EPA participates for Ireland.
\textsuperscript{19} Liam Cashman, HOW TO ENSURE THAT THE COMMISSION EXERCISES A ROLE COMPLEMENTARY TO THE ROLES OF GOVERNMENT, PUBLIC AUTHORITIES, CITIZENS AND THE COURTS, UCC Law and the Environment, 2010
the Supreme Court hearing of a parallel request which has been scheduled for late 2013. We are told we can expect a ruling in 2014.

The lessons of the Kertiffstown Landfill where the EPA is now forced to pursue the Directors individually after the liquidation of the operating companies would suggest that that ‘closer cooperation between local authorities, the Environmental Protection Agency and the Director of Public Prosecutions’ may not have been entirely realised.

We pay the huge costs.

A recently released EPA report suggested remediation at Kertiffstown will cost the state up to €30 million. More than €6 million has reportedly been spent in an emergency response to recent fires.

Haulbowline cost €42 million by 2008, when all work was stopped.

The bill for repatriating waste and remediating sites across the border where our waste was illegally dumped in between 2002 – and 2004 is estimated to be €36 million.

Certainly, the Kertiffstown, Co Kildare resident who wrote into the EPA would not be impressed with a ‘complaint system’ the Commission thinks has been established as a results of C-494/01:

‘Unless you have had to endure the arduous, lengthy, irritating and annoying process which we have had to endure for almost 5 years you will NEVER know the pain of dealing with an agency like the EPA which lacks the basic courtesy of replying to a registered letter which was written by my 73 year old mother in the early hours of a November night in 2009 because she could not sleep with the pungent, noxious, odours.

Case C-418/04 - The ‘Birds’ Judgment

Six complaints from Ireland led to the judgment in Case C-418/04 of 13 December 2007 that ruled Ireland had failed to protect wild birds.

Many organisations have actively and strenuously sought to have elements of the Birds Judgment implemented – BirdWatch Ireland, the Golden Eagle Trust, An Taisce and ourselves amongst others – each with different goals and each working independently.

Fresh from the judgment, early in 2008 the Golden Eagle Trust and Irish Raptor Study Group met National Parks and Wildlife, submitting an Action Plan Points for the raptors.

They focused on the Ireland’s failure to curb the indiscriminate and reckless use of poison and the lack of a protocol for the systematic post mortem examination, toxicology analysis, and record of dead birds of prey. Of the 77 birds introduced since 2007, 15 had died, 9 of them confirmed as poisoned.

20 Mr Gary Fitzgerald & the Department of the Taoiseach (Case CEI/07/0005)
‘Whether a request for information comprising Cabinet discussions on Ireland's greenhouse gas emissions can be refused by reference to the European Communities (Access to Information on the Environment) Regulations 2007 (S.I. No. 133 of 2007)
21 Consultation on a Review of the Environmental Protection Agency, Submissions Received.
18 months later, their patience was exhausted and they submitted a new infringement complaint to the EU.

Finally, perhaps due mainly to public national and international outcries, in October 2010 a ban was announced on Alphachloralose, which was previously registered and commonly used to kill crows and foxes, and on the use of meat bates. The Golden Eagle Trust recently learned that Alphachloralose had actually been placed on the restricted list by the Department of Agriculture in 2008 – but no one told the farmers.

Birdwatch ‘maintained frequent contact with Commission and with NPWS and the MoEHLG to progress delivering the components of the ECJ ruling,’ particularly the missing SPAs.

Siobhan Egan, their Conservation Officer, reports:

‘While new SPA boundaries have been advertised only a few have had Statutory Instruments signed off by the Minister, and the transposition legislation has been drafted and passed by other government departments but not given effect. Other components of the ruling that have seen no progress include compensation measures for sites (esp Dublin Bay), and provision of wider countryside measures. Large chunks of the judgement still remain that have not been addressed.’

Friends worked on the hen harrier, an issue that came into play because of our concerns over forestry. This became topical through a coordinated campaign by the farming community against designations which began in 2002.

At the hearing of this case in 6 July 2006, Ireland stated that ‘studies have been carried out on six of the nine abovementioned species included in Annex I as well as on the dunlin, a regularly occurring migratory species. The completion of that work henceforth allows for the identification of sites which may be classified as SPAs for the conservation of the red-throated diver, the hen harrier, the merlin, the golden plover and the dunlin.’ [C-418/04 - 04]

In fact the exact opposite was happening.

When the Dail resumed after the 2006 summer break Dick Roche, then Minister for the Environment, told the House on 29 November 2006, that since the 2003 announcement of the original designation of SPAs for protection of the Hen harrier,

‘My Department has thoroughly reviewed the research and information on the Hen Harrier, including the results of a second national survey in 2005. Based on this work, a significant consolidation in relation to the number and extent of Hen Harrier SPA’s is now envisaged.’

22 It is now only registered and approved in Ireland for the control of mice.
23 The decline of the hen harrier from 300 pairs in 1968 to 130 in 2005 was to be countered by SPAs, but these were limited to their nesting sites and not their foraging grounds; nor were winter nesting sites protected. Of those that were designated, grassland was excluded, forestry was to be permitted up to a set limit even inside the boundaries, and there were no controls over planting around the harrier’s sites. The survey due out shortly shows no change in bird numbers in spite of considerably expanded surveys.
This 'consolidation' meant that the 9 areas identified in 2003 were cut to 6, and the total hectares to be protected fell from 287,000 hectares to 169,000 hectares. The Kilworths and the Nagles lost all protection and the Ballyhouras were also excluded from the SPA designation. This was despite the fact that the Ballyhouras had seen the most improved harrier numbers since 2000.

The situation today remains that there has been no further announcements of the designations promised Europe in 200625.

C-66/06 - Countryside heritage

We are now in the final endgame over this 2008 ECJ ruling that we have failed to protect the ‘environmental sensitivity of geographical areas’ by not ‘paying particular attention to landscapes of historical, cultural or archaeological significance’.

On the 16th of February 2010, the Commission issued a Press Release announcing ‘Environment: Commission seeks fines against Ireland for not adopting legislation to protect countryside heritage’. [Annex I] In March of 2010, the Commission sent Ireland a first written warning under Article 260 TFEU. [Annex II]

In May 2010 the Department wrote to selected NGOs – an admirable initiative without precedent – seeking advice and outlining their initial ideas.

While again many organisations had concerns, FIE concentrated on the destruction of archaeological monuments as this tied into work on a blatant case in North Cork.26

The loss of our archaeological has been staggering. A 2000 publication by the Heritage Council of seven study areas totalling 600 square miles - or 2.2% of the land area in the Republic of Ireland - found that 34% of the monuments known to exist in the study area had been destroyed in the previous quarter-century and a further 10% could not be found. The destruction rate was estimated at 10% of monuments per decade.

In 2006 Teagasc [the farm advisory body] called the coming decade ‘a high risk period for Ireland’s archaeological heritage’. Teagasc predicted that ‘the reduction in farmer numbers, together with enlargement of farms to the scale necessary to maintain international competitiveness will result in the longstanding familial association with archaeological sites becoming significantly eroded’.

Yet there had never been a successful prosecution of landowners for the destruction of a monument. In fact, under the National Monuments (Amendment) Act 2004 only the failure to notify of the intention to perform works on these sites was an offence.

Legal Opinions prepared for FIE showed that unless landowners were notified, a plea of ‘mens rea’ – no knowledge or intent to commit an offense - would be likely to succeed. We lobbied extensively for Notification to landowners, as is done to alert farmers to the designation of SACs or SPAs on their land.27

25 See the Slide show of maps showing the vanishing hen harrier 1970 – 2005 http://www.friendsoftheirishenvironment.net/index.php?do=photos&gId=3
26 ‘Loophole allows the destruction of ancient monuments’ http://www.friendsoftheirishenvironment.net/index.php?do=friendswork&action=view&id=867
And it would not be expensive, as Minister for Finance Brian Lenihan changed the law in 2008 to allow Government Departments to make searches for landowners free.\textsuperscript{27} The completion of the electronic register of all landowners has made it what the Land Registry calls an ‘overnight job’ to provide the names and addresses of all landowners with these monuments on their land.

Yet the Department’s National Monuments Advisory Committee refused to add the notification to the proposed new National Monuments legislation. We wait to see if this will be required by the Commission to satisfy the judgment.

**C-66/06 - Aquaculture**

C-66/06 also included the increasingly bizarre situation of the Irish aquaculture industry.

Approximately $\frac{2}{3}$ of Ireland’s fish farms are located in Natura 2000 sites, the sensitive estuaries into which our major rivers exit with their protected species. Of these $\frac{2}{3}$, a further $\frac{2}{3}$ are pending renewal or a new licensing. At a conservative estimate, half of Ireland’s aquaculture lacks a valid licence and therefore has not been subject to any environmental assessment, something clearly laid out in EU case law.

The issue was first raised by the Commission in 2001. It came to judgment on 20 November, 2008, and now has been notified to Ireland as subject to a new application to the Courts under for daily fines. [Annex II]

The initial application in the ECJ was brought on 6 February 2006. Four months later on 4th April, 2006, Ireland enacted the Sea Fisheries and Maritime Jurisdiction Act, 2006. Section 19A\textsuperscript{28} gave operators the right to continue to operate without a licence if they had simply applied for a licence renewal.\textsuperscript{29}

It was under this legislation that the mussel dredgers operated in Lough Swilly SPA, in spite of Coastwatch’s extraordinary efforts over 3 years to prevent this ongoing ecological disaster.

Finally, in November 2010 Coastwatch issuing a week’s warning notice to the Minister that if he did not comply with the four month time limit to determine the licences’ under Section 13 of the Fisheries Amendment Act 1996 they would bring proceedings.

The Minister’s astonishing reply was that he was under no obligation to do so because Section 13 had never been commenced.

Section 1 of the 1996 Act requires that each section be commenced. Further legal advice confirmed that Neither Sections 11 or 13 had commenced.\textsuperscript{30} But the opinion also revealed that Section 19A of the Sea Fisheries and Maritime

\textsuperscript{27} SI No. 51 of 2008

\textsuperscript{28} “A licensee who has applied for the renewal or further renewal of an aquaculture licence shall, notwithstanding the expiration of the period for which the licence was granted or renewed but subject otherwise to the terms and conditions of the licence, be entitled to continue the aquaculture or operations in relation to aquaculture authorised by the licence pending the decision on the said application.”

\textsuperscript{29} On the basis of Waddenzee, it is clear under EU law that even the renewal of a license requires an assessment, yet in practise licensees applied for as long ago as 2004 are still pending consideration, undermining investment as well as the environment.

\textsuperscript{30} The initial commencement orders were dated 26\textsuperscript{th} day of February 1998 and the 16th day of June, 1998, with the provisions other than section 11 and 13 of the Act brought into operation on 30\textsuperscript{th} day of June 1998.
Jurisdiction Act, 2006 (under which as noted some half of the aquaculture industry is operating) has also not been commenced!

It was because the mussel dredgers in Lough Swilly drew their authorisation from Section 19A that a Court granted an injunction to prevent local fishermen from interfering in the dredging. The fishermen lost the case and cost were awarded against them, bringing them this week before the Bankruptcy Court.

The legal opinion which revealed this [Annex III] was sought by Coastwatch and given by John Wilde Crosbie on 28 February, 2011 at the launch of their survey in the offices of the EU Commission.

To make the situation more legally sensitive, the fisherman in Lough Swilly (who felt hard done by) challenged 19A on the grounds that it was unconstitutional as it did not balance the rights of the parties. Justice DeValera ruled that Section 19A was in fact constitutional – which it might be if Sections 11 and 13 of the 1996 Act which protected other users and had been commenced.

At the time of writing it is unclear what the consequences will be of this situation.

Karen Dubsky writes:

'It means that in areas where the aquaculture activity is damaging to the environment it should not have continued and the loss – even in Natura 2000 sites – must now be addressed and restoration planned.'

**CASE C66/06 – Fencing**

The non-enforcement, rather than the non-commencement, of legislation also frustrates European judgments. Long the subject of complaints from ‘Keep Ireland Open’, the Judgment in C66/06 also mentioned the issue of fencing.

The Planning and Development Regulations 2001 require planning permission for the permanent fencing of lands habitually open to the public for ‘recreational purposes or as a means of access to seashore, mountain, lakeshore, riverbank or other place of natural beauty or recreational utility’.

Yet uplands fencing over the last two years has increased dramatically, particularly in mountainous traditionally ‘unenclosed’ land in counties like Donegal. Yet the Donegal Local Authority has no records of any planning applications in the last five years.

The cause of the explosion of fencing is the need for more spread lands for the additional slurry now collected through the new facilities provided under the Farm Modernisation Scheme combined with the ‘Nitrates Regulations’. Without these additional lands, farmers risk exceeding the limits under the ‘Nitrates Regulations’ for nutrient levels on existing spread lands.

Afraid that these remote parcels of land were not being utilized but were simply what is called ‘map acres’, the Department required permanent fencing, even

refusing to allow electric fencing – and even in the successor to REPs [AEOS] where the fencing is paid for by the state.

The Department did not make recipients of the grant aware of the planning regulations – and the farmers fenced the lands. To date, the Department has refused to address the issue and a complaint has been made to the Secretary General of the European Commission.

**C-392/96 - EIA: PEAT**

On 21 September 1999 the Court ruled that ‘Ireland has not denied that no project for the extraction of peat, covered by point 2(a) of Annex II to the Directive, has been the subject of an impact assessment although small-scale peat extraction has been mechanised, industrialised and considerably intensified, resulting in the unremitting loss of areas of bog of nature conservation importance.’


Ireland’s 4th National Report to the Convention on Biological Diversity, released on 14 May 2010, estimated that there has been a 99% loss of the original area of actively growing raised bog, and one-third of the remaining 1% has been lost in the last 10 years’ –since FIE first met in the Central Hotel.

There are two distinct problems:

- The destruction of the designated raised bogs in the last ten years without the application for a permit that would trigger assessment.
- The industrial scale extraction on the midland’s bogs without EIA,

By 2003 the Commission’s patience was exhausted. Then Environment Commissioner Margot Wallström said: ‘The European Court of Justice ruled on this case over three years ago and it is essential that Ireland now comes into line with the legal provisions on environmental impact assessment. The Irish government have recently informed me of their intention to comply fully with the Directive.’

Article 228 EC proceedings for fines, [Case C-294/03] were taken in July of 2003. The Commission sought a daily fine of €21,600 and stated although ‘Ireland has taken some measures in an effort to execute the judgment, they remain inadequate in theory and have not been implemented in practice.’ [57]

One of the approaches which an internal mail showed they would consider, and ‘if feasible progress’ was

"- an assessment of the scope for further influencing the Commission to re-think its proposed reference to ECJ: this would include immediate preparation of a strong briefing note for the McCreevy Cabinet." [my emphasis]  

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On 1 December, 2005, ‘The President of the Court has ordered that the case be removed from the register’.

No EIAs have been required, and the ‘derogations’ for raised bog cutting continued.

The hiatus did not last long. A new Pilot complaint was received in 2008 that a internal Department of Environment memo records was ‘to some degree a revisiting of the case’. 35

The Minister for the Environment defended Ireland in the Dail in November 2010. ‘I understand that there have been a number of cases in which my Department, the EPA or a planning authority has determined that an EIA [for peat extraction] is required.’ 36

In fact, only one has ever been undertaken, and that only because the National Parks and Wildlife Service wished to sell a bog no longer need for turf cutters relocation to a horticultural company, a development ultimately refused by An Bord Plenala after an appeal from An Taisce.

Part of the promises by Ireland in 2005 had been that 75 raised bogs and 73 blanket bogs would be designated as Natural Heritage Areas and given the status of SACs.

An internal memo shows that even within the Department there was confusion:

"....What I have found is Paul Connolly's note to Christina Loughlin, with the wording "outlining the positive benefits for the protection of peatlands that will ensue from such [NHA] designations". Is that a full statement of what Cashman was suggesting, or is there any more detail anywhere? (I don't propose to ring Cashman, only give him another opportunity to squeeze more blood out!)."

Indeed, the programme for Government has now promised that

- We will allow an exemption for domestic turf cutting on 75 National Heritage Area sites subject to the introduction of agreed national code of environmental practices.

FIE also questions how the Irish authorities can claim that NHAs have the same status of SACs and SPAS, particularly as NHAs do not have the SAC/SPA ‘Notifiable actions’ – the list which inform a landowner of the activities which are considered to require permission from the Minister. 38

A letter from Minister for the Environment Eamon O’Cuiv in February 2011 to local TDs [Annex IV] appears to suggest that those who have refused compensation to

34 In this area as in others relating to peat readers should refer to FIE’s extensive Petition to the President of the European Union. http://www.friendsoftheirishenvironment.net/peat/links/peat_petition_web_june2010.pdf
35 E-mail from Frank Fitzpatrick to Matthew McLoughlin and Peter Carvill, cc Aidan Kinch, Dominick O'Brien and Sarah Davis; Date: 31/7/09 11:23; Subject: FOI request from Friends of the Irish Environment.
36 Written parliamentary reply, John Gormley, Thursday, 4th November, 2010 [40953/10]
37 E-mail from Alan Craig to Michael McCarthy, cc Paul Connolly, dated 20/07/2005 12:22:21, Subject: Elusive wording re peatland designations’.
38 It would be FIE’s view that European Communities (Natural Habitats) (Amendment) Regulations, 2005 [S.I. NO. 378 OF 2005] do not have the effect of applying the Natura 2000 regime to NHAs for the purposes of Irish law. They simply provides a statutory construction provision to ensure that no-one could argue that a licence could be granted under the Wildlife Act (as amended in 2000) without taking account of impacts on Natura 2000 sites.
date should not be asked to cease cutting – said to be 500 of the 700 cutters involved. In spite of dramatic under spending under the relevant Axis, the Department of Agriculture has said to be refusing to make funds available on the grounds that turf cutting is mining, not agriculture.\(^{39}\)

Even if a robust compensation programme was in place, there is nothing clear cut about the future cutting in the Government Programme:

- We will establish an independent mediation between all relevant stakeholders with specific objective of facilitating resolution to 55 Special Area of Conservation designated bogs.
- We will establish an independent mediation to resolve outstanding issues associated with turf cutting on blanket bogs.

FIE is of the view that the polluter pays principle should apply here, in line with Ireland’s obligations under the Environmental Liability Directive. Andrew Jackson writes ‘Surely ceasing an unlawful activity many years after it should have stopped should not attract compensation. Indeed, under the Environmental Liability Directive, turf contractors who have caused significant damage to protected raised bogs are in fact required to remediate the damage they have caused.’\(^{40}\)

The principle obstacle we have encountered is a flat refusal by the Parks and Wildlife Service to accept that peat extraction must be assessed if it cannot be excluded, on the basis of objective scientific information, that it will have a significant effect on a site, either individually or in combination with other plans or projects.\(^{41}\) It is their (indefensible) position that negative impact must be shown before the requirements are triggered.\(^{42}\)

Remember Margot Walstrom’s 2003 observation that measures taken ‘remain inadequate in theory and have not been implemented in practice’?

Let us look at the new Minister for the Environment’s reply to a written Parliamentary reply to Independent Dublin South Deputy Maureen O’Sullivan on the 22\(^{nd}\) of March, 2011:

My Department is currently reviewing certain aspects of planning regulations relevant to the application of the Environmental Impact Assessment Directive both in the context of Ireland’s proposals to address the findings of a European Court of Justice case on on-farm developments as well as broader application of environmental impact assessment for peat extraction.

\(^{39}\) In a startling example of the difficulties that face NGOs when pursuing compliance, one of the core issue that is slowing progress is actually the Department of Agriculture. If you look at the table of expenditure in the mid-term CAP Review, you will see that only a very small percentage of the available funds for environmental works – Axis 3 & 4 – have been taken up, compared to say the Farmer Retirement Scheme. While Parks and Wildlife Budget has suffered a succession of cuts and had to ends its farm plan programme for European Sites, the DoA had still not rolled out the REPS replacement, which is far oversubscribed or begun other budgeted measures.

\(^{40}\) That said, we support certain measures to assist parties who will no longer be permitted to cut turf in protected areas. These should include, for example, the planting of woodlands on suitable land for use as a carbon neutral fuel source, and measures under Sustainable Energy Ireland's existing Home Energy Saving Scheme, such as contributions towards the cost of insulating homes, as well as the fitting of more efficient heating systems.

\(^{41}\) It should also be borne in mind that, under the first sentence of Article 6(3) of the Habitats Directive, any plan or project not directly connected with or necessary to the management of the site is to be made subject to an appropriate assessment of its implications for the site in view of the site’s conservation objectives if it cannot be excluded, on the basis of objective information, that it will have a significant effect on that site, either individually or in combination with other plans or projects (Case C-127/02 Waddenvereniging and Vogelbeschermingsvereniging [2004] ECR I-7405, paragraph 45). Case C-418/04

\(^{42}\) The issue was discussed in detail between a FIE meeting with Department officials in 2010.
I note the continuing concern expressed in successive questions by the Deputy in respect of the environmental impact assessment of peat extractions. As part of the above mentioned review, my Department is preparing new regulations which will, *inter alia*, address peat extraction and EIA. These will be submitted to the Oireachtas for approval by positive resolution in the near future.

Indeed, while the issue has now become a Formal Warning Letter under 260 TEFU – more daily fines\(^{43}\) - it is coming perilously close to the first use of ‘interim measures’ by the Commission – injunctive relief – to protect a habitat if the non-compliance on raised bogs continues this year.

**Conclusion**

In 2005 the Commission declared that the complaints that were the most serious were those ‘Infringements that undermine the foundation of the rule of law;’ In 2008 they gave as a further priority – ‘Respect for Court judgments declaring the existence of infringements’.\(^{44}\)

There have obviously been serious advances in the environmental protection after rulings of the ECJ – in waste, waste water treatment, improved drinking water, and even in assessment. But the failure to move swiftly and directly to address ECJ judgments - indeed in cases deliberately to frustrate them - can only undermine the authority of the ECJ and make it less likely that the original hopes of groups like ours for European law will be achieved.

Tony Lowes
4 April 2011

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\(^{43}\) Tuesday, 22nd March, 2011

\(^{44}\) Prof. Dr. Ludwig Krämer, The environmental complaint in EU law, *JEEPL* 6.1 (2009) 13–35
ANNEX I

Environment: Commission seeks fines against Ireland for not adopting legislation to protect countryside heritage

Reference: IP/11/168 Date: 16/02/2011

Brussels, 16 February 2011
Environment: Commission seeks fines against Ireland for not adopting legislation to protect countryside heritage

The European Commission is taking Ireland back to the European Court of Justice for failing to implement an earlier ruling concerning developments that may harm the natural and man-made heritage of the countryside. Two years after the judgment, Ireland has still not adopted legislation to address the issue. On the recommendation of Environment Commissioner Janez Potočnik, the Commission is referring the case back to Court and asking it to impose a lump-sum fine of more than €4000 per day for the period between the first Court ruling and the second Court ruling and a daily penalty payment of more than €33,000 per day for each day after the second Court ruling until the infringement ends.

Directive 85/337/EEC on the assessment of the effects of certain public and private projects on the environment requires Member States to establish systems for deciding whether individual projects need to undergo an environmental impact assessment. The aim is to ensure that projects which are likely to have a significant effect on the environment are assessed in advance so that people are aware of what those effects are likely to be.

The decision on when a project needs to undergo an environmental impact assessment can be made based on thresholds, case-by-case analysis or a combination, or both. Whichever system they choose, Member States must take account of the specific selection criteria described in the Directive. These include sensitive locations such as sites protected under European nature legislation or landscapes of archaeological significance.

The case refers to a European Court of Justice (ECJ) ruling against Ireland in November 2008. This found that the thresholds for undertaking an environmental impact assessment for certain types of projects, including the restructuring of rural landholdings and water management projects for irrigation or land drainage, were too high. They did not take enough account of sensitive countryside features. This led to loss of wetlands and other habitats and the destruction of archaeological remains without any environmental impact assessments ever being required.

The European Court of Justice has ruled that Member States cannot select on the basis of project size alone – small projects can have significant impacts on important nature sites. Irish legislation uses very high thresholds – up to 100 hectares – to select projects for assessment. This means that projects can go ahead unchecked and damage or destroy archaeological sites, which generally occupy areas less than 1/100th of the size of the threshold, or other sensitive countryside features.

The Commission sent a letter urging Ireland to comply with the Court ruling in March 2010 (see IP/10/313). However, more than two years after the judgment, Ireland has failed to adopt any legislation to resolve the issue. That is why the
Commission is now referring the case back to the European Court of Justice and is asking for fines to be imposed.
For current statistics on infringements in general, see:
http://ec.europa.eu/community_law/infringements/infringements_en.htm
http://ec.europa.eu/environment/legal/implementation_en.htm
See also MEMO/11/86
ANNEX II

Ireland: Commission sends final warning over four breaches of environmental law; closes two cases

Reference: IP/10/313   Date: 18/03/2010

IP/10/313
Brussels, 18 March 2010
Ireland: Commission sends final warning over four breaches of environmental law; closes two cases
The European Commission is sending a final warning to Ireland over four cases where it has failed to comply with European Court of Justice rulings concerning illegal development and developments that may harm the natural and man-made heritage of the countryside, access to the Irish courts and protection of marine mammals. If the necessary steps are not taken, the Commission could refer the cases back to the Court and ask for fines to be imposed. Following action by the Irish authorities, the Commission is also closing two long-standing cases on drinking water supplies and shell-fish growing areas, shelving earlier proposed fines for the latter.

EU Environment Commissioner Janez Potočnik said: "I am pleased to see that Ireland has taken the necessary measures to enable the Commission to close two long-running cases. I would now urge the Irish authorities to renew their efforts to satisfy other important court rulings."

Final warning in two environmental impact assessment cases
The first case refers to a Court ruling in July 2008 concerning Ireland's failure to ensure that work on projects that might require an environmental impact assessment (EIA) does not start before the necessary checks or studies are carried out. The Court found that Ireland's use of a system of retention permission to retrospectively approve such work was contrary to the EIA Directive. The Court also found that there had been a failure to undertake a proper prior impact assessment of a wind farm at Derrybrien, County Galway, which caused a major peat slide. No legislation has been adopted to address the issue of retrospective permission identified in the judgment. In the Derrybrien case, the Irish authorities agreed to undertake an EIA to look in detail at further potential issues, however, to date none has been made due to delays in proposed new legislation.

The second case relates to a Court ruling in November 2008 which found that the thresholds for undertaking an environmental impact assessment for certain types of projects, including the restructuring of rural landholdings and water management projects for irrigation or land drainage, were too high. This led to loss of wetlands and other habitats and destruction of archaeological remains without any EIAs ever being required. No legislation has been adopted to address the issue.

Access to justice
On July 2009 the Court ruled that Ireland had failed to transpose into national law changes to the Environmental Impact Assessment Directive, including provisions on public participation in the decision-making process and access to justice. The Court found that Irish legislation failed to explicitly require that information on review procedures should be made available to the public and that access to the Irish courts should not be prohibitively expensive for citizens and NGOs. Ireland
set out several measures it proposed to take to meet these shortcomings, however, the Commission is not aware that any of these have been put in place.

Nature case

In January 2007 the Court ruled that Ireland had failed to take the necessary steps to adequately safeguard certain strictly protected species, including marine mammals (whales, dolphins and porpoises) and bats. These species represent some of Ireland's most important indigenous wildlife. Ireland agreed to put in place plans to monitor and protect these species. Although plans are in place for bat species, those for marine mammals have yet to be satisfactorily concluded.

In all four cases, the Commission is sending Ireland a first written warning under Article 260 of the Treaty on the Functioning of the European Union. If Ireland does not take the necessary steps, the Commission could refer the cases back to the Court, with the possibility of fines.

Closure of two long-running cases

The Commission is closing two long-standing cases following action by the Irish authorities.

In November 2002, the Court found that there were chronic problems of microbiological contamination of hundreds of Irish private and public water supplies despite EU rules stipulating that drinking water should be kept bacteria-free. Ireland adopted an array of measures in response, tightening legislation and increasing enforcement powers. Several hundred million euros were invested in upgrading drinking water supplies and installing chlorine monitors and alarms. The Commission is now closing the case. Issues of source protection from deficient septic tanks are being addressed separately.

The second case concerns measures needed to ensure quality standards for shellfish waters on the Irish coast, following a judgment from the Court in June 2007. In October 2009, the Commission proposed to refer this case back to Court, with the imposition of fines if the Irish authorities did not comply with the judgment within three months (see [IP/09/1647]). The authorities subsequently took the necessary measures, designating the remaining shellfish water site at Rostellan, Cork, and establishing pollution reduction programmes for all designated areas. As a result, the Commission is now closing the case.

Legal Process

The Commission has the power to take legal action against a Member State that is not respecting its obligations under Community law, under Article 258 of the Treaty on the Functioning of the European Union. The infringement procedure begins with a first written warning (“Letter of Formal Notice”) to the Member State concerned, which must be answered within two months. If the Commission is not satisfied with the reply, this first letter may be followed by a final written warning (“Reasoned Opinion”) clearly explaining the infringement, and calling on the Member State to comply within a specified period, usually two months.

A failure to act on the final written warning can result in a summons to the Court of Justice. If the Court rules against the Member State, it must then take the necessary measures to comply with the judgment. If, despite the ruling, a Member State still fails to act, a further round of the infringement process begins under Article 260 of the Treaty, this time with only one written warning. This second round can ultimately result in financial penalties for the Member State concerned.


Cases:
EIA case 2000/4384
EIA case 2000/5196
Nature case 2001/4917
Access to justice case 2005/0633
Water case 1997/4409
Shellfish 2002/5076
ANNEX III


A NOTE ON THE COMMENCEMENT OF THE PROVISIONS OF THE FISHERIES (AMENDMENT) ACT, 1997, AS AMENDED BY THE FISHERIES AND MARITIME JURISDICTION ACT, 2006, IN RELATION TO PENDING APPLICATIONS FOR THE RENEWAL OF AQUACULTURE LICENCES.

In 1997 the Oireachtas passed an Act entitled AN ACT TO AMEND AND EXTEND THE LAWS RELATING TO FISHERIES, TO PROHIBIT PERSONS FROM ENGAGING IN AQUACULTURE EXCEPT WITH AND IN ACCORDANCE WITH A LICENCE TO ESTABLISH A PROCEDURE FOR THE GRANTING, RENEWAL, AMENDMENT AND REVOCATION OF LICENCES, TO ALLOW FOR APPEALS AGAINST DECISIONS RELATING TO LICENCES, AND FOR CONNECTED PURPOSES.

The Act did not come into operation upon its passing because Section 1 (3) provided: “This Act shall come into operation on such day or days as may be fixed therefor by order or orders of the Minister, either generally or with reference to any particular purpose or provision, and different days may be so fixed for different purposes and different provisions of this Act.”

Any doubt about the power of the Minister to bring into force the provisions of an Act in which the enabling power itself has not been brought into force is removed by section 17 of the Interpretation Act 2005.

The Minister did not bring the Act into force generally but, rather, by Statutory Instrument 46/1998 fixed the 26th day of February 1998 as the day on which sections 2, 3, 4(1) (in so far as it repeals section 54A of the Act of 1980), 5(2), 10, 23, 63, 64, 65(2), 65(3), 66 and 67, shall come into operation; by Statutory Instrument 203/1998 fixed the 16th day of June, 1998, as the day on which sections 19, 22, 24 to 39, 68 and 70 of, and the Schedule shall come into operation; and, again by Statutory Instrument 203/1998, the provisions other than section 11 and 13 of the Act were brought into operation on 30th day of June 1998 save in so far as already in operation. Thus, on that latter date the Act was not in operation generally, the Minister having exercised his power to bring particular sections into force and to leave out others.

Section 11 which was not enacted provided: “Notwithstanding anything in this Act, an application for a licence shall not be accepted or, having been accepted shall not be determined, if, after the commencement of this section but before the application is determined, the applicant or any person on behalf of the applicant commences to engage in aquaculture at the place or in waters to which the application relates.”

Section 13 which was not enacted provided:-

“(1) The Minister shall endeavour to determine an application for a licence –
(a) in the case of an application for a trial licence, as soon as practicable, but in any case not later than four months after all requirements of or under the application regulations relating to the application have been complied with, and
(b) in the case of an application for an aquaculture licence received on or after the commencement of this section—
(i) within four months from the date on which all requirements of or under the application regulations relating to the application have been complied with, or
(ii) such other period as the Minister may prescribe, either generally or in respect of a particular class of applications to which the application belongs.
(2) Where it appears to the Minister that it would not be possible or appropriate,
because of the particular circumstances relating to an application for a licence, to
determine the application within the period referred to in subsection (1), the
Minister shall, by notice in writing served on the applicant and any person who
has made submissions or observations in relation to the application in
accordance with the application regulations, inform the applicant and those
persons of the reasons why it would not be possible or appropriate to determine
the application within that period and shall specify the date before which, or the
period within which, the Minister intends that the application shall be
determined.

(3) Where a notice has been served under subsection (2), the Minister shall take
such steps as are open to him or her to ensure that the application is determined
before the date, or within the period, specified in the notice.

(4) The Minister may make regulations—
(a) providing that subsection (1) shall not have effect for such period as is
specified in the regulations, or
(b) varying a period mentioned in that subsection, either generally or in respect
of a particular class or particular classes of applications,
where it appears to the Minister to be necessary, because of exceptional
circumstances, to do so and, for so long as the regulations are in force, this
section shall be construed and have effect accordingly.

(5) In this section “application for a licence” shall include an application for a
review of an aquaculture licence.

The failure of the Minister to bring the Act into operation generally and, in
particular, to bring the provisions of Section 13 into operation within a reasonable
time ought to have been of concern to aquaculture fishermen. However, the
environment, including Natura 2000 sites, was protected from unlicensed
aquaculture activity because Section 6 of the Act provided that:

“(1) A person
who, at any place or in any waters, engages in aquaculture except under and in
accordance with an aquaculture licence, a trial licence, or an oyster bed licence or
an oyster fishery order shall be guilty of an offence.”

This protection from unlicensed aquaculture was put at risk by the enactment of
the Sea Fisheries and Maritime Jurisdiction Act, 2006, which, at Section 101,
inserted a new section 19A into the Fisheries (Amendment) Act, 1997, which
provides at Section 19A (4):

“A licensee who has applied for the renewal or
further renewal of an aquaculture licence shall, notwithstanding the expiration of
the period for which the licence was granted or renewed but subject otherwise to
the terms and conditions of the licence, be entitled to continue the aquaculture or
operations in relation to aquaculture authorised by the licence pending the
decision on the said application.”

The Sea Fisheries and Maritime Jurisdiction Act, 2006, came into force upon its
passing in April of that year so the Fisheries (Amendment) Act incorporated the
new Section 19A (4) from that date. However, the Minister has not yet fixed the
day upon which the new provision is to come into operation as he his empowered,
and indeed, required to do by Section 1 of the Act as described above.
The purpose of this note is to draw attention to the fact that Section 13 of the Act has not been brought into force and that therefore if Section 19A of the Act is brought into force without the Act, as enacted by the Oireachtas, being brought into force generally or without Section 13 being brought into force at the same time, then, unlicensed aquaculture will become legal where a licensee has applied for the renewal or further renewal of an aquaculture license notwithstanding the expiration of the original license. Without the operation of Section 13 when Section 19A is brought into operation, such unlicensed aquaculture would be legalised for an indefinite period since the Minister would be under no time constraint in determining the application for a new license while the applicant exploited the site without any consideration by the Minister of the impact of the activity on the site or the damage which may be occurring to the habitat or protected flora and fauna.

John Wilde Crosbie,
Barrister.
28th February, 2011.
ANNEX IV

February 2011

Micheál Kitt TD
Castleblakeney
Ballinasloe
Co Galway

Mary O’Rourke TD
Aisling
Arcadia
Athlone
Co Westmeath

A Chairde

Re: Policy re SAC bogs.

In relation to a policy regarding SAC Bogs, it is important that we recognise that there are obligations under EU law in relation to both the protection of SAC and NHA. Even though NHAs are a national designation, the EU Court has ruled that Ireland has an obligation to preserve NHAs under EU law.

As Minister of the Environment, I believe that it is important that the Irish Government would, in the first place, outline to the Commission the importance of turf cutting in Ireland and the fact that these regulations need to be implemented in a sensitive way.

All turf cutters on designated SAC bogs that have to cease turf cutting on these bogs should only be asked to do so where there is compensation involved, either financial compensation or relocation to other suitable bogs within their locality.

It is a matter of regret for me that the previous Minister of the Environment did not progress the discussions that had been taking place last year between bog owners, turf cutters and the Department with a view to coming at mutually acceptable solutions to this very difficulty problem. In this regard, as Minister for the Environment, it is now my intention to set up a council between the Department of the Environment, Heritage and Local Government and the local bog users and owners as well as representatives from Bord na Móna (as Bord na Móna have considerable bogs that they could make available for turf cutting on), to try negotiate a suitable resolution to the problems and ensure that Ireland is not brought to the European Court for infringement of the Habitats Directive. Until suitable arrangements are made, the arrangements that were in place in 2010 should also apply in 2011.

Mise le meas

Éamon Ó Cuív
Minister for the Environment, Heritage, and Local Government