

- (d) where the planning authority determines under article 14(3) or (5) that the implementation of a local area plan, an amended plan or an amendment to a local area plan would be likely to have significant effects on the environment,

The planning authority shall, prior to giving notice under section 20(3) of the Act, prepare an environmental report of the likely significant effects on the environment of implementing the local area plan, an amended plan or an amendment to a local area plan, and the provisions of articles 14C to 14J shall apply.”

***(ii) Minor modifications to plans and programmes***

106. The Commission, at paragraph 3.50 of the Reasoned Opinion, repeats its contention that S.I. No. 436 is deficient in relation to the determination of whether a modification of a proposed development plan, proposed variation of a development plan, proposed local area plan or proposed amendment of a local area plan requires an SEA. In its view, it appears from the wording of S.I. No. 436 that where a proposed plan in these categories is determined not to require an SEA or where an SEA is deemed necessary and an environmental report is prepared, any subsequent amendment to the proposal will escape the Directive's requirements, even where such an amendment is likely to have significant environmental effects. The practice of re-zonings of land introduced late in a plan-adoption process is referred to.
107. Regarding the requirement that any modifications to plans and programmes (including draft amendments to a draft development plan) be screened for SEA, the Commission should note that new provisions proposed in the Planning and Development (Amendment) Bill 2009 facilitate that all proposed amendments following the first public consultation period on the draft development plan, draft local area plan, draft regional planning guidelines and SDZ draft planning scheme (and any draft variations thereof) must be screened, and where any of these proposed amendments are deemed likely to have significant environmental effects, an environmental assessment will be required. Furthermore, following the second (and final) public consultation phase in relation to such plans, the new Planning Bill also proposes to limit the scope for the authority to introduce any minor modifications to the draft plan by removing the ability of the authority to accept a minor modification which increases the area of land zoned, which amends the Record of Protected Structures or which is found following SEA or Habitats screening to be likely to significant environmental effects. If a proposed modification is determined to fall within any of these three categories, by their nature, such modification are not minor in nature and therefore cannot be permitted to be incorporated into the final draft plan before adoption.
108. Accordingly, the following amendments are proposed to be inserted into subsection 10 of section 12 of the Planning and Development Act 2000 (proposed amendments highlighted in bold):
- (10)— (a) The members of the authority shall, by resolution, having considered the amendment and the manager's report, make the plan with or without the proposed amendment, except that where they decide to accept the amendment, they may do so subject to any modifications to the amendment

that they consider appropriate, **which may include the making of a further modification to the amendment.**

(b) The requirements of subsections (7) to (9) shall not apply in relation to modifications made in accordance with paragraph (a).

(c) **A further modification to the amendment—**

- (i) may be made where it is minor in nature,**
- (ii) shall not be made where it refers to—**

- a) an increase in the area of land zoned for any purpose,**
- b) an addition to or deletion from the record of protected structures, or**
- c) where it has been determined, following a screening assessment carried out by the manager, that the proposed modification is likely to have significant effects on the environment.**

**(e) “Other programmes” in Annex II of the Directive**

109. The Commission, in its Additional Letter of Formal Notice, stated “as regards the criteria of Annex II of the Directive referred to in Article 3(5), in particular those criterion set out in Annex II.I, second indent,<sup>1</sup> Ireland makes no reference to other programmes in the schedule of S.I. No. 436 of 2004 that corresponds to Annex II”.
110. In response, Ireland emphasised in its reply of 18<sup>th</sup> July 2008, and still maintains, that the relevant Schedule of S.I. No. 436 of 2004 states, “the degree to which the plan influences other plans, including those in a hierarchy”. This wording is identical to the relevant wording of Annex II of the Directive apart from the omission of “programmes”. As previously stated, “programmes” do not exist within the Irish town planning system; hence the absence of an express reference to ‘programmes’ in S.I. 436. As indicated earlier at Part II.1.(a) above, Ireland is considering making an amendment to the Regulations, so as to make formal provision to include “programmes” within the scope of the transposing Regulations.
111. In any event, insofar as the “*relationship between development plans and local area plans, on the one hand, and infrastructure or pollution control programmes, on the other*”, are concerned, these inter-relationships are, as already stated, specifically provided for in the statutory Guidance Document, which specifically requires that a plan’s “relationship (both vertical and horizontal) with other plans/programmes” be considered in the SEA process. Thus, any infrastructure or pollution control programmes are considered fully within the relevant plan, which is subject to the SEA process. Ireland submits that the Commission’s objection, at paragraph 3.54 of the Reasoned Opinion, that the Guidance Document cannot be considered a substitute for binding legislation is met satisfactorily by the fact that the Guidance Document has a statutory basis and must be taken into account by the relevant competent authorities.

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<sup>1</sup> The second indent of Annex II.I states “the degree to which the plan or programme influences other plans or programmes, including those in a hierarchy”.

112. Notwithstanding this, and the fact that there is specific citation in the SEA Guidance Document to “plans and other programmes” in Annex II of the Directive, it is proposed to amend Schedule 2A of the 2004 Regulations (S.I. No. 436) to include a specific reference to “other programmes”.
113. Section 1 of Schedule 2A of the 2004 Regulations (S.I. No. 436) is to be amended by the insertion of the words “or programme” in the first and second bullet indents.
114. Therefore, this part of Schedule 2A should now read:

**Criteria for determining whether a plan is likely to have  
significant effects on the environment**  
*Articles 13A, 13K and 14A*

1. The characteristics of plans and programmes, having regard, in particular, to:
  - the degree to which the plan or programme sets a framework for projects and other activities, either with regard to the location, nature, size and operating conditions or by allocating resources,
  - the degree to which the plan or programme influences other plans and programmes including those in a hierarchy,
  - the relevance of the plan or programme for the integration of environmental considerations in particular with a view to promoting sustainable development,
  - environmental problems relevant to the plan or programme,
  - the relevance of the plan or programme for the implementation of European Union legislation on the environment (e.g. plans linked to waste management or water protection).

**(f) Transposition of Article 5(1) to(3): environmental report**

115. Similar to the amendment mentioned above, it is also proposed to amend Schedule 2B of the 2004 Regulations (S.I. No. 436) to include a specific reference to “other programmes” in the information to be contained in the environmental report.
116. Similar to the amendment mentioned above, it is also proposed to amend Schedule 2B of the 2004 Regulations (S.I. No. 436) to include a specific reference to “other programmes” in the information to be contained in the environmental report.
117. Therefore, subsections (a) of Schedule 2B will read:

**Information to be contained in an environmental report**  
Articles 13E, 13N, 14D, 15D and 179C

- (a) an outline of the contents, main objectives of the plan or programme and relationship with other relevant plans and programmes;
  - (b) the relevant aspects of the current state of the environment and the likely evolution thereof without implementation of the plan or programme;
  - (c) the environmental characteristics of areas likely to be significantly affected;
  - (d) any existing environmental problems which are relevant to the plan or programme including, in particular, those relating to any areas of a particular environmental importance, such as areas designated pursuant to the Birds Directives or the Habitats Directive;
  - (e) the environmental protection objectives, established at international, European Union or national level, which are relevant to the plan or programme and the way those objectives and any environmental considerations have been taken into account during its preparation;
  - (f) the likely significant effects on the environment, including on issues such as biodiversity, population, human health, fauna, flora, soil, water, air, climatic factors, material assets, cultural heritage including architectural and archaeological heritage, landscape and the interrelationship between the above factors;
  - (g) the measures envisaged to prevent, reduce and as fully as possible offset any significant adverse effects on the environment of implementing the plan or programme;
  - (h) an outline of the reasons for selecting the alternatives dealt with, and a description of how the assessment was undertaken including any difficulties (such as technical deficiencies or lack of know-how) encountered in compiling the required information;
  - (i) a description of the measures envisaged concerning monitoring of the significant environmental effects of implementation of the plan or programme; and
  - (j) a non-technical summary of the information provided under the above headings.
- (g) ***Transposition of Article 5(4): consultation of environmental authorities with regard to scope and level of detail of the information which must be submitted in the environmental report; and transposition of Article 6(3): designation of environmental authorities to be consulted***

117. Article 6(3) of the SEA Directive states that "Member States shall designate the authorities to be consulted which, by reason of their specific environmental responsibilities, are likely to be concerned by the environmental effects of implementing plans and programmes." Notwithstanding the broad discretion conferred on a Member State in this regard, the Commission has engaged in a detailed criticism both of the identity of the authorities to be consulted, and the provisions made in respect of public consultation, in particular at page 16 of the Reasoned Opinion.

118. With respect, the Commission's criticism is unfounded. Ireland has acted well within the discretion afforded to it under the SEA Directive, and the Commission has not made out any case for criticising Ireland's measures. For the sake of completeness, Ireland proposes to address in detail each of the specific complaints advanced by the Commission, but does so strictly without prejudice to its contention that the Directive confers a very wide discretion on Member States in this regard.
119. In that regard, the Commission's Reasoned Opinion can point to nothing in the Directive which suggests that Ireland has not correctly exercised the discretion afforded to. At paragraph 3.63, the Commission is limited to relying, on the one hand, on the bare text of Article 6(3) itself and to Recital (15) of the Preamble to the Directive, which does nothing more than state that "authorities with relevant environmental responsibilities ... are to be consulted", on the other hand.
120. As Ireland has already made clear, it is, in fact, the case that three distinct and specialised environmental authorities have been formally designated under both S.I. No. 435 and S.I. No. 436 of 2004:
- the Environmental Protection Agency (EPA), which is the statutory authority dealing with such matters as waste, water quality and integrated pollution prevention and control;
  - the Minister for Environment, Heritage and Local Government, who has responsibility for Ireland's extensive built and natural heritage functions; and
  - the Minister for Communications, Marine and Natural Resources (now the Minister for Agriculture, Fisheries and Food arising from a transfer of Ministerial functions), who has responsibility for the marine environment.
121. Ireland refers to Article 9(5) of S.I. No. 435 of 2004, where it is expressly provided that the EPA must be consulted by a regional or planning authority in respect of Articles 3, 5, 6 and 7 of the Directive. The Minister for the Environment, Heritage and Local Government must be consulted in relation to the same Articles where the plan might have significant effects in relation to architectural or archaeological heritage or nature conservation. The Minister for Agriculture, Fisheries and Food must be consulted where the plan might have significant effects on fisheries or the marine environment. Ireland is fully satisfied that the three authorities designated more than meet the requirements of the Directive.
122. To the specific criticisms outlined by the Commission, Ireland responds as follows.
- (i) Consultation with Minister for Agriculture, Fisheries and Food*
123. Firstly, the Minister for Agriculture, Fisheries and Food must be consulted where the plan might have significant effects on fisheries or the marine environment.
- (ii) Consultation with the Minister for the Environment, Heritage and Local Government*
124. Secondly, the Commission makes reference to the fact that the Minister for the Environment, Heritage and Local Government is only consulted in relation to certain environmental issues, namely, architectural or archaeological heritage or to nature

conservation, whilst there is no provision for consulting the Minister in relation to other areas within the Minister's remit such as waste or drinking water treatment. The reason for this is that Ireland's EPA, a body under the aegis of the Minister for the Environment, Heritage and Local Government, was established with a particular remit and expertise in these areas. The EPA is the appropriate national expert authority in relation to waste and drinking water and has been formally designated for this purpose under the Directive.

125. The Commission has failed to consider the three designated environmental authorities holistically. Between them, these three specialised authorities provide information and advice across a broad range of environmental issues and concerns. It is unreasonable to consider the designated role of one authority in isolation from the other authorities.

*(iii) Consultation with other bodies*

126. Thirdly, the Commission also makes reference to the fact that some other bodies, such as the Heritage Council and the various Regional Fisheries Boards are not designated authorities for consultation purposes. With respect, the Commission fails to appreciate that the bodies referred to operate under the aegis of the two designated Ministries. At paragraph 3.64 of the Reasoned Opinion, the Commission alleges that, notwithstanding Ireland's contentions, bodies with environmental responsibilities, such as the Fisheries Boards and Heritage Council exercise those responsibilities independently of the Minister for the Environment and the Minister for Agriculture. In response, Ireland maintains that those bodies fall within the remit of the aforementioned Departments.
127. Again, Ireland reiterates that the Directive leaves it open to Member States to decide what bodies shall be designated authorities under the provisions of the Directive. Without prejudice to this contention, Ireland would ask the Commission to note that, as a matter of practice, such bodies are regularly consulted by the appropriate Ministries and a close working relationship and information exchange system operates between such bodies and the Ministries.

*(iv) Consultation with local authorities*

128. Fourthly, in relation to the concern that there is no provision for consultation with appropriate local authorities, Ireland reminds the Commission that the Directive provides for Member States to decide on appropriate designated environmental authorities. Notwithstanding that, the statutory Guidelines state that "planning authorities should consult adjacent planning authorities as appropriate". Thus, actual custom and practice in Ireland is that local authorities do consult with neighbouring authorities as part of the SEA process, and, in practical terms, the statutory Guidelines constitute a more than adequate substitute for designation, contrary to what is alleged by the Commission at paragraph 3.64 of the Reasoned Opinion. In any event, any local authority is fully entitled to participate in the robust public consultation process provided for under Ireland's transposing legislation.

*(v) Summary and proposed amendments*

129. In summary therefore, it is Ireland's position that its transposing provisions in national legislation governing consultations are not restrictive and are neither contrary to the requirements of Article 6(3) nor, by extension, Article 5(4) of the Directive. Ireland maintains that, although neither S.I. No. 435 (in relation to SEA generally) nor S.I. No. 436 (in relation to SEA of land use plans) formally designate the environmental authorities to be consulted, they are nonetheless named for the purposes of consultation in article 7 of S.I. No. 436 and cross-referenced subsequently (e.g. in Article 8 in relation to LAPs).
130. As regards the further complaints at paragraph 3.64 of the Reasoned Opinion, that (i) the Ministers for the Environment and Agriculture respectively "are only to be consulted with regard to limited aspects of their portfolios"; and (ii) that Ireland has designated none of the main authorities with land-use responsibilities in Ireland, namely local authorities and the Planning Appeals Board, Ireland's position is as follows. As regards (i), both Ministers referred to above are notified of draft plans and programmes as regards which they are likely to be concerned by reason of their specific environmental responsibilities, as required by Article 6(3) of the SEA Directive. As will be explained below, the Minister for the Environment will, pursuant to proposed legislative amendments, be given notice as regards all draft plans and programmes. As regards (ii), as explained at paragraph 128 above, local authorities currently do consult with neighbouring authorities, and this practice is proposed to be codified by statutory amendment. By contrast, the Planning Appeals Board is not an appropriate body for designation with a view to being notified of draft plans and programmes. The Board is an independent body, established by statute, with responsibility for the determination of, *inter alia*, planning appeals and other matters under the Planning and Development Acts.
131. Notwithstanding and without prejudice to the above arguments, it is proposed that the environmental authorities be formally designated as such, and at the same time, Ireland will update the list of environmental authorities to take account of changed responsibilities (e.g. the remit for specific marine matters has been transferred to the Departments of Agriculture, Fisheries and Food and of the Environment, Heritage and Local Government). Moreover, the inclusion of the Department of Agriculture, Fisheries and Food as a designated body will allow that department, as the parent body overseeing policy development and management of the Fisheries Boards, to co-ordinate as it deems appropriate in relation to water pollution and fisheries.
132. Furthermore, in light of the Minister for the Environment, Heritage and Local Government's broad functions regarding water and drainage infrastructure which can impact on environmental protection, it is also proposed that the Minister also be designated as an environmental authority in all cases, and not just in relation to the built or natural heritage, as is the position at present. While we note the Commission's suggestion that the Heritage Council and the National Museum should also be designated bodies, Ireland nonetheless considers that the Minister's policy and oversight role in relation to heritage matters is sufficiently comprehensive, and that he has the scope to consult with these bodies as necessary. Therefore, and pursuant to its discretion under the SEA Directive, Ireland does not propose to designate these latter two bodies.
133. In summary, it is proposed to amend article 9(5) of S.I. No. 435 as follows (amendments highlighted in bold):

Art. 9 (5) Prior to making a decision under sub-article (2) or (3), a competent authority shall give notice in accordance with sub-article (6) to the following environmental authorities –

- (i) the Environmental Protection Agency,
- (ii) the **Minister for the Environment, Heritage and Local Government**, and
- (iii) where it appears to the competent authority that the plan or programme, or modification to the plan or programme, might have significant effects on fisheries or the marine environment, the **Minister for Agriculture, Fisheries and Food**.

134. Similarly, the following amendments are proposed to article 13A(4) of the 2004 Regulations (S.I. No. 436) (amendments highlighted in bold). There is no requirement for any further amendments to the regulations, seeing as this section is cross-referenced in corresponding provisions in the 2004 Regulations (S.I. No. 436) as regards local area plans [Article 14C (1)], regional plans [Article 15C (1)] and SDZ planning schemes [Article 179B (1)].

- 13A(4) (a) Where, following consideration under sub-article (2), a determination under sub-article (3) has not been made by the planning authority, the authority shall give notice in accordance with paragraph (b) to the following environmental authorities –
- (i) the Environmental Protection Agency,
  - (ii) the **Minister for the Environment, Heritage and Local Government**, and
  - (iii) where it appears to the competent authority that the plan or programme, or modification to the plan or programme, might have significant effects on fisheries or the marine environment, the **Minister for Agriculture, Fisheries and Food**.

135. The following amendment is proposed to be made to Article 13A(4)(a) of the 2004 Regulations (S.I. No. 436) by adding the following provision:

“(iv) any planning authority whose area is contiguous to the area of the planning authority which prepared the draft plan, material amendment or proposed variation. In each case the draft shall be accompanied by the environmental assessment of the draft where such an assessment has been prepared.”

136. A similar amendment is proposed to be made to Article 9(5) of S.I. 435.

#### (h) **Transposition of Article 6(2) and (4): consultation of the public**

137. The Commission alleged that the Irish transposing legislation falls short of fulfilling the requirements of Article 6(2) of the Directive, which states that the public be given an early and effective opportunity to express their opinion on the draft plan or programme and the accompanying environmental report before the adoption of the plan or programme or its submission to the legislative procedure. It is further alleged that the Irish legislation allows

for the possibility that the relevant documents will only be made available at remote locations and during restricted hours.

138. Ireland recalls that the Directive gives no specific direction as how Article 6(2) shall be implemented. On the contrary, Article 6(5) of the Directive makes plain that “[t]he detailed arrangements for the information and consultation of the authorities and the public shall be determined by the Member States”.
139. In that regard, Article 6(2) has been transposed by Ireland by the terms of Article 13 of S.I. No. 435 of 2004, which provides that:

“(1) A competent authority shall

[...]

(b) publish notice, in accordance with sub-article (2), of the preparation of the draft plan or programme, or modification to a plan or programme, and associated environmental report in at least one newspaper with a sufficiently large circulation in the area covered by the plan or programme, or modification to a plan or programme.

(2) A notice under sub-article (1)(b) shall state that—

(a) a copy of the draft plan or programme, or modification to a plan or programme, and associated environmental report may be inspected at a stated place or places and at stated times during a stated period of not less than 4 weeks from the date of the notice (and the copy shall be kept available for inspection accordingly), and

(b) a written submission or observation with respect to the draft plan or programme, or modification to a plan or programme, and associated environmental report made to the competent authority within the period referred to in paragraph (a), or such period as may be specified in law in respect of the draft plan or programme, or modification to a plan or programme, will be taken into consideration before the finalisation of the plan or programme, or modification to a plan or programme.”

140. It is Ireland’s case that these legislative provisions codifying the detailed arrangements allowing the public an early and effective opportunity to express its opinion met the Directive’s objectives, in particular bearing in mind the discretion afforded to Member State in that regard pursuant to Article 6(5). In practice, such plans and programmes are advertised by public notice in newspapers and for the relevant documentation to be made available for public inspection at the public offices of the body concerned during normal working hours. In many regional and planning authorities, relevant documentation is in fact made available not only at their head offices but through local offices and the local library network.
141. Ireland repeats its contention that there is a parallel between the discretion accorded to the Member States in respect of their duties concerning public consultation under this directive, and the discretion accorded to the Member States as regards public participation under the EIA Directive. This issue was addressed recently by the Court of Justice in Case C-216/05 *Commission v. Ireland* [2006] ECR I-10787, where the court held that a Member

State enjoyed a discretion to impose a participation fee in respect of planning applications subject to the EIA Directive, notwithstanding the fact that there was no express provision under the directive for the charging of any such fee. In particular, Advocate General Stix-Hackl emphasised that the discretion enjoyed by a Member State under a directive is subject to the general principles of Community law, and in particular of effectiveness and equivalence. The detailed procedural and substantive rules laid down in national law must not render it virtually impossible or excessively difficult to implement the Community rules, and national law must be applied in a manner which is not discriminatory as compared to corresponding proceedings or procedures which concern purely domestic law. Despite the Commission's bald assertion, at paragraph 3.73 of the Reasoned Opinion, that this is not the correct test, but rather it must be considered whether the public has an early and effective opportunity to express an opinion, Ireland maintains that it is the correct test and that it has been met in the present circumstances.

142. Ireland submits that, in the present case, there is nothing about the implementation and application of Article 6(2) of the Directive in national law that makes it virtually impossible or excessively difficult to implement the relevant Community rules and to allow the public an early and effective opportunity to express their opinion on the draft plan or programme and accompanying environmental report. In particular, despite the Commission's detailed allegations, the Directive makes no provision for posting of documents or for internet publication. Notwithstanding that, the 2007 Guidelines on development plans, paras 5.20 - 5.28, specifically recommend that planning authorities make full use of IT, including the Internet, in encouraging public involvement in the consultation process.
143. It should also be noted that the statutory SEA Guidelines require regional and planning authorities to "take a pro-active approach to engaging the public in the SEA process, for example by dedicating part of their websites to SEA information". As a result, it is normal practice for the relevant documentation to be made available to the public via the website of the body concerned, thus providing 24 hour public access. Consequently, despite the Commission's contentions to the contrary, such Guidance Document is more than an adequate substitute for an express transposing provision encompassing such a requirement.
144. To sum up, therefore, contrary to the Commission's accusation, Ireland submits that its transposing legislation provides an early and effective opportunity for the public to express an opinion, and is well within the discretion afforded to Member States in this regard. Strictly without prejudice to this submission, Ireland can inform the Commission that consideration is being given to an amendment to the Regulations to require internet publication.
145. The other criticism raised by the Commission concerns Article 6(4) of the Directive, which requires that Member States shall identify the public for the purposes of paragraph 2, including the public affected or likely to be affected by, or having an interest in, the decision-making subject to the SEA Directive, including relevant non-governmental organisations, such as those promoting environmental protection and other organisations concerned.
146. In its Additional Letter of Formal Notice, the Commission, without providing any details, simply stated that the provisions of Article 6(4) were not transposed into Irish law.

Notwithstanding this shortcoming on the part of the Commission, Ireland made the following points as regards the identification of the public affected or likely to be affected by, or having an interest in, the decision-making subject to the SEA Directive. Although Article 6(4), read together with Article 6(2) of the SEA Directive affords Member States discretion to identify (and hence limit) the section of the public to be given a right to express an opinion, Ireland applies no such restriction: any person or body can make a submission, irrespective of whether they are to be affected. There is, therefore, no need to formally identify one section of the public. Ireland submits that in those circumstances, where there is no restriction on the identity of persons or bodies which can make submissions, the national transposing Regulations are in no way inconsistent with the provisions of the SEA Directive.

147. The Commission now responds, at paragraph 3.70 of the Reasoned Opinion, by contending that the identification of the public affected for the purposes of Article 6(4) of the Directive is linked to the duty to make the environmental report available as well as the duty to ensure that the public has an early and effective opportunity to express an opinion. It also notes that a plan or programme requiring an SEA may have impacts or consequences in any or all parts of Ireland. Its specific complaint is that since relevant authorities (i) are not required to identify the public; and (ii) are not “*explicitly required*” to ensure that that public has an early and effective opportunity to express an opinion; and (iii) have a limited duty to publish in a newspaper notice of the draft plan or programme and ensure that the environmental report is made available at a stated place. The complaint is that it cannot be assumed that the place where the report is made available is related to the physical location of the affected public.
148. In response, Ireland maintains that, in the light of the explanation given above, in particular, at paragraph 145, this is not a valid criticism, and that Ireland has adequately transposed Article 6(4) of the Directive in this regard. Ireland also relies by analogy on the judgement of the ECJ in Case C-427/07 *Commission v. Ireland* where a complaint by the Commission in respect of the transposition of the concept the “public concerned” under the EIA Directive was rejected by the Court as unfounded.
149. With respect to each of these final matters raised by the Commission regarding consultation with the public, current legislation does, therefore, require that both a draft plan (or variation, etc.) and the SEA report should be made available for public consultation, and written submissions invited. While the Commission acknowledges that Article 6(2) does not stipulate how public consultation should take place, nor does it suggest any practical alternatives, its assertion that making such documents available at a remote location (for people outside the relevant area) and during restricted (office) hours militates against giving the public “an early and effective opportunity to express an opinion”, can be satisfactorily addressed by requiring that relevant documents be placed on the website of the plan-making authority<sup>2</sup> during the public consultation phase. In practice, most planning authorities now provide access to such documents on their websites but for the avoidance of doubt, inclusion of such a requirement will ensure a standardised and consistent approach across all consent authorities and for all levels of plans.

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<sup>2</sup> Either a planning or regional authority, or the Board in the case of draft SDZ planning schemes which are appealed.

150. Accordingly, it is proposed to amend S.I. No. 435 by the insertion of the following language, and to make the same amendment to the corresponding provisions in S.I. No. 436.

151. Accordingly, it is proposed to amend S.I. No. 435 by the insertion of the following language (shown in bold):

Art. 9(7) As soon as practicable after making a determination under sub-article (2) or (3), the competent authority shall –

(a) make a copy of its decision, including, as appropriate, the reasons for not requiring an environmental assessment, available for public inspection at the offices of the competent authority during office hours **and on the authority's website**; and

(b) notify its decision ....

Similar wording shall be inserted in articles 13(2)(a), 14(4)(c), and 16(2) of S.I. No. 435, and in the corresponding provisions in S.I. No. 436.

### Summary of proposed legislative amendments

In summary, and strictly without prejudice to Ireland's contentions detailed in its reply of 18<sup>th</sup> July, 2008 and reiterated in the detailed discussion above, Ireland proposes to make the following legislative amendments (subject to Government and Oireachtas approval. As indicated at paragraph 76 above, the amendments will be made on a staged basis over the next two to five months.

The first tranche of amendments will involve changes to secondary legislation, namely the European Communities (Environmental Assessment of Certain Plans and Programmes) Regulations 2004 (S.I. No. 435), the Planning and Development (Strategic Environmental Impact Assessment) Regulations 2004 (S.I. No. 436) and the Planning and Development Regulations 2001. The following amendments are planned to be made on or before end March 2010.

- Amendment of Article 9(1)(a) of S.I. No. 435 which defines the sectoral plans and programmes which require environmental assessment, by adding the phrase "town and country planning or land use", subject to the exclusion of specified types of land use plans listed in Art. 3(2) of S.I. No 435.
- Amendment of Article 14A of the 2004 Regulations (S.I. No. 436) to provide that it apply to a local area plan or an amendment to a local area plan for an area the population of which is less than 5,000 persons and / or where the area covered by the local area plan is less than 60 square kilometres. It is proposed to make a similar amendment to Article 14B of the 2001-2008 Regulations.
- Amendment of Schedule 2A of the 2004 Regulations (S.I. No. 436) to include a specific reference to "other programmes". Section 1 of Schedule 2A of the 2001 Regulations is to

be amended by the insertion of the words “or programme” in the first and second bullet indents.

- Amendment of Schedule 2B of the 2004 Regulations (S.I. No. 436) to include a specific reference to “other programmes” in the information to be contained in the environmental report.
- Amendment of Article 9(5) of S.I. No. 435 to provide that in accordance with sub-article (6) the following environmental authorities are consulted the Environmental Protection Agency, the Minister for the Environment, Heritage and Local Government, and where appropriate Minister for Agriculture, Fisheries and Food. Similarly, it is proposed to amend Article 13A(4) of the 2001-2008 Regulations to provide for consultation with the same environmental authorities.
- Amendment of Article 13A(4)(a) of the 2004 Regulations (S.I. No. 436) by adding a provision that any planning authority whose area is contiguous to the area of the planning authority which prepared the draft plan, material amendment or proposed variation must be consulted and a similar amendment is proposed to be made to Article 9(5) of S.I. No. 435.
- Amendment of Article 9(7) of S.I. No. 435 to provide for internet publication of determinations under sub-article (2) or (3). Similar wording shall be inserted in articles 13(2)(a), 14(4)(c), and 16(2) of S.I. No. 435, and in the corresponding provisions in S.I. No. 436.

The second tranche of legislative amendments will be made to primary legislation through the Planning and Development (Amendment) Bill 2009. In the context of this case, the following amendments are proposed.

- It is proposed to provide for a further public consultation period (of not less than 4 weeks) in the preparation of draft regional planning guidelines under section 24 of the Planning and Development Act 2000, where any amendments are deemed, through an SEA or Habitats Directive Appropriate Assessment screening, to be likely to have significant effects on the environment.
- It is proposed to amend section 169(4) of the Planning and Development Act 2000, as amended, in relation to proposed variations to a draft SDZ planning scheme by a planning authority to allow for SEA screening and a possible further public display, and consider amendments to section 169(7) in relation to modifications which might be proposed by the Board.
- Regarding the requirement that any minor modifications to plans and programmes (including draft amendments to a draft development plan) be screened for SEA, new provisions proposed in the Bill, will prohibit all but minor modifications to a draft development plan or draft LAP following the (second) display of proposed amendments; .

The third and final set of proposed amendments will be made once the 2009 Bill has been enacted as the amendments to Regulations are reliant on underlying amendments to primary legislation. The proposed amendments are as follows.

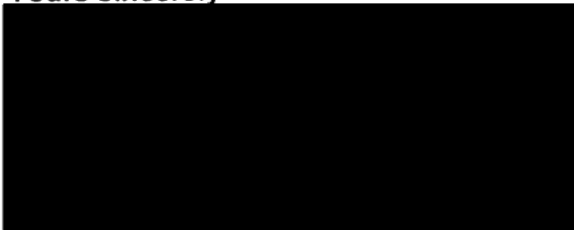
- Further to the proposed amendment to section 24(6) of the Planning and Development Act 2000, as amended, Ireland also intends to provide for a specific reference in Article 10 of S.I. No. 436 of 2004 in relation to proposed amendments for regional planning guidelines. This text will be drafted once the primary legislative language has been agreed with Parliamentary Counsel and enacted.
- Further to the proposed amendment to section 169(4) and 169(7) of the 2000 Act, it is also intended to reflect appropriate changes to the Planning and Development Regulation 2001-2008 through amendments to Part 14 of the Regulations, once the primary legislative language has been agreed with Parliamentary Counsel and enacted.

## Conclusion

Ireland maintains that, contrary to the Commission's complaints, it has fulfilled its obligations under Articles 2 to 10 inclusive, and 13 of the Directive. Notwithstanding this and without prejudice to some of Ireland's submissions, a number of legislative amendments are being progressed, as outlined above, which Ireland believes will meet specific concerns identified by the Commission.

Ireland would welcome the opportunity of discussing any of its submissions or proposed amendments with the Commission, and remains, at all times, willing to co-operate in respect of the matters addressed in this response.

Yours sincerely

A large black rectangular redaction box covering the signature area.

Environment Attaché



**ANNEX I**

Memorandum from Department of Taoiseach to Department of Finance, dated 6 July 2005

## **ANNEX II**

### **Lansdowne Road Stadium**

As Ireland has already explained in its previous response of 27<sup>th</sup> September, 2007, An Bord Pleanála's reference to the NDP was only in the context of funding for the proposed sports stadium. The fact that the reference to the NDP was only in relation to funding simply serves to confirm the point made above to the effect that the NDP is excluded from the terms of the SEA Directive on the basis that it is a financial or budget plan or programme. Moreover, the commitment on behalf of the Irish Government to provide funding for the redevelopment at Lansdowne Road was made in January, 2004, that is about three years in advance of Government approval and launch of the NDP. The NDP, in that respect, merely repeats a decision which had been made previously.

### **Waste Incinerator Project in County Meath**

In relation to the waste incinerator project in County Meath, An Bord Pleanála gave nine reasons and considerations for granting permission for the project including the Meath County Development Plan, 2007. The NDP was referred to only in respect of its provisions concerning waste management. These provisions are general; they are not project specific and do not descend to any level of detail about any site. It was the Meath County Development Plan, 2007 which set the framework for development consent, within the meaning of Article 3(2)(a) of the Directive. By virtue of s.4 of the Waste Management (Amendment) Act, 2001, the County Development Plan was deemed to include the objectives contained in the Regional Waste Management Plan. Given the detailed directions in the County Development Plan regarding waste management (at pp. 175-180), that was evidently the case.

### **New Airport Terminal at Dublin Airport**

In relation to the new airport terminal and ancillary works at Dublin Airport, while it is true that An Bord Pleanála did mention the NDP as one of ten reasons and considerations for granting, in part, planning permission for a passenger terminal and development, it expressly stated that the NDP, along with the National Spatial Strategy (2002 to 2020), and Transport 21 (2006 to 2015) were heeded only because they provide for expansion of infrastructural capacity and for investment priority. The decision then goes on to mention the plans which set the framework for development consent in that instance, namely the Fingal County Development Plan (2005 to 2011) and the Dublin Airport Local Area Plan (2006). In that respect, it is clear from the list of specific policies regarding Dublin Airport outlined in the Fingal County Development Plan (2005 to 2011) (pp. 105-106), that it served that purpose.

### **N6 Road Project and Quarry Development at Horseleap**

As regards the N6 road project (Ballinasloe to Athlone Dual Carriageway, County Galway), and the quarry development at Horseleap, no reference to the NDP was made in the respective An Bord Pleanála decisions. The N6 road project was, according to An Bord Pleanála, approved specifically having regard to the provisions of the development plan for County Roscommon. While the An Bord Pleanála Inspector's Report did allude to the NDP, this was no more than four passing references in a 114 page document.

Permission was granted for the quarry development at Horseleap contrary to the recommendation of the Inspector. In the Inspector's Report, there is only one brief mention of the NDP; in this mention the NDP is simply referred to as being mentioned in the document '*Quarries and Ancillary Activities, Guidelines for Planning Authorities*', and as generally containing a series of major infrastructure projects which will create a corresponding demand for aggregates. Again, Ireland draws attention to the fact that it is the County Offaly Development Plan, 2003-2009 referred to in the Inspector's Report, and addressing the availability of sand and gravel deposits available to facilitate the needs of industry and employment in the County, which sets the framework for development consent in that instance. In particular, section 2 of the County Offaly Development Plan, 2003-2009, dealing with development strategies and policies, addresses issues of mining and quarrying and sets out, in some detail, the County's policies in that regard, balancing the needs of the building industry against those of protection of the environment (at sections 2.8 and 2.10.4).

*ANNEX III*

*Glencar Explorations plc v Mayo County Council (No. 2) [2002] 1 I.R. 84*

*McEvoy v. Meath County Council [2003] 1 I.R. 208*

*Aer Rianta CPT v Commissioner for Aviation Regulation [2003] IEHC 168*

## **ANNEX IV**

Guidelines for Regional and Local Authorities on the implementation of the SEA Directive