



COMMISSION OF THE EUROPEAN COMMUNITIES

SECRETARIAT-GENERAL

Brussels, 26. 06. 2009

ACCUSÉ DE RÉCEPTION

Irish PRB

RECEPTION

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26-06-2009

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SG-Greffe(2009)D/ 3677

PERMANENT REPRESENTATION
OF IRELAND TO THE
EUROPEAN UNION
Rue Froissart, 89-93

1040 BRUSSELS

Subject: Letter of formal notice
Infringement No 2000/4384

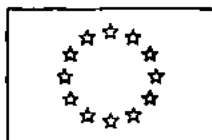
The Secretariat-General should be obliged if you would forward to the Minister for Foreign Affairs the enclosed letter from the Commission.

For the Secretary-General



Encl. C(2009) 4781

IE



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Sir,

I would draw your Government's attention to the judgment of the Court of Justice of the European Communities, dated 3 July 2008, in Case C-215/06, *Commission v Ireland*, to the effect that

"by failing to adopt all measures necessary to ensure that:

- projects which are within the scope of Council Directive 85/337/EEC of 27 June 1985 on the assessment of the effects of certain public and private projects on the environment either before or after amendment by Council Directive 97/11/EC of 3 March 1997 are, before they are executed in whole or in part, first, considered with regard to the need for an environmental impact assessment and, secondly, where those projects are likely to have significant effects on the environment by virtue of their nature, size or location, that they are made subject to an assessment with regard to their effects in accordance with Articles 5 to 10 of Directive 85/337, and*
- the development consents given for, and the execution of, wind farm developments and associated works at Derrybrien, County Galway, were preceded by an assessment with regard to their environmental effects, in accordance with Articles 5 to 10 of Directive 85/337 either before or after amendment by Directive 97/11,*

Ireland has failed to fulfil its obligations under Articles 2, 4 and 5 to 10 of that directive"

Mr Micheál MARTIN,
Minister for Foreign Affairs,
Department of Foreign Affairs
80, St. Stephen's Green,
Dublin 2,
Ireland

Under Article 228(1) of the Treaty establishing the European Community, if the Court of Justice finds that a Member State has failed to fulfil an obligation under the Treaty, the State is required to take the necessary measures to comply with the judgment of the Court of Justice.

By letter of 15 July 2008, the Commission of the European Communities asked your Government what measures it had taken to comply with the Court of Justice judgment referred to above. It asked for a response within two months of the date of the judgment.

Your authorities responded by letter of 3 September 2008. They indicated that the Irish Government had approved the drafting of new primary legislation to address the issue of retention permission. As regards the Derrybrien wind farm developments and associated works, they indicated that it was intended to provide an updated environmental impact assessment and to undertake public consultation in respect of this. A meeting took place with the Irish authorities on 18 September 2008.

Since then, the Commission has not received any draft legislation from the Irish authorities and no additional information has been provided on how the envisaged examination of the impacts of the Derrybrien wind farm developments is proceeding.

Separately in the context of a submission of 15 October 2008 to the EU Pilot problem-solving mechanism (reference 84/08/Envi), the Irish authorities observed that pending the proposed legislation, interim action was necessary in relation to applications for retention permission for development that required an EIA, falling into two categories

- applications currently awaiting determination by planning authorities; and
- applications which have been determined favourably since 3 July 2008

In this context, the Irish authorities drew attention to a circular letter reference Circular PD 6/08 issued by the Irish environment ministry to Irish planning authorities and the Irish Planning Appeals Board after the judgment.

The circular letter contains the following passage:

"In respect of applications for permission for the retention of unauthorised development where such development comes within Annex II of the Directive, planning authorities should proceed to decide whether an EIA is necessary or not ("screening decision"). If an EIA is not considered necessary, then the planning authority should proceed to deal with the application in the normal course. If, conversely, the planning authority decides that an EIA is necessary it should take the steps referred to in the previous paragraph."

It goes without saying that a circular letter cannot, in itself, satisfy the need for amended legislation. In addition, the Commission would draw attention to the fact that the Circular Letter is at variance with the terms of the judgment in that it allows for screening decisions to take place after projects have been executed in whole or in part whereas the judgment clearly covers the screening stage (see reference to *"first, considered with regard to the need for an environmental impact assessment ..."*). Through its circular letter, the Irish environment ministry would therefore appear to approve an interim continuation of a practice which runs contrary to the judgment.

On 10 March 2009, the Irish authorities submitted the outline of draft legislation aimed at implementing the judgment. The draft was in a preliminary and incomplete form. It provided for removal of the current retention permission possibility but also provided for a new type of retrospective consent. It is understood that this is intended to reflect paragraph 57 of the judgment where the Court states: *"While Community law cannot preclude the applicable national rules from allowing, in certain cases, the regularisation of operations or measures which are unlawful in the light of Community law, such a possibility should be subject to the conditions that it does not offer the persons concerned the opportunity to circumvent the Community rules or to dispense with applying them, and that it should remain the exception."* However, the proposed new form of retrospective consent appears to be available in a very wide set of circumstances and not to be of an exceptional nature. In any case, the draft legislation is still at a rudimentary stage and it is not clear when Ireland will achieve compliance. The time that has already elapsed indicates that Ireland is failing to ensure compliance with the judgment as soon as possible.

As the Commission of the European Communities has received only incomplete information about the measures taken by your Government to comply with the judgment of 3 July 2008, it takes the view Ireland has failed to fulfil its obligations under Article 228(1) of the Treaty establishing the European Community.

The Commission invites your Government, in accordance with Article 228(2) of the Treaty, to submit its observations on the foregoing within two months of receipt of this letter.

After examining these observations, or if no observations have been submitted within the prescribed time-limit, the Commission may, if appropriate, issue a reasoned opinion as provided for in Article 228(2) of the Treaty establishing the European Community.

The Commission would also draw your Government's attention to the financial penalties that the Court of Justice may impose, under Article 228(2) of the Treaty establishing the European Community, on a Member State that fails to comply with its judgment.

Under this same article and on the basis of its Communication of 13 December 2005 on the application of Article 228 of the EC Treaty, when the Commission refers a case to the Court of Justice, it specifies the amount of the lump sum, of the penalty or of both, to be paid by the Member State concerned, which it considers suited to the circumstances.

Yours faithfully,

For the Commission

Stavros DIMAS

Member of the Commission



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For the Secretary - General

