



EUROPEAN COMMISSION

SECRETARIAT-GENERAL

**ACCUSÉ DE RÉCEPTION**

NOM  
(en caractères d'imprimerie)

REÇU LE A HEURES

REÇU PAR TELEFAX LE A HEURES

SIGNATURE

Brussels, 22 III 2010

SG-Greffe(2010)D/

3759

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 Secretary of State for Foreign Affairs the enclosed letter from the Commission.

**Irish PRB  
RECEPTION  
22-03-2010  
RECEIVED**

For the Secretary-General

Encl. C(2010) 1393

IE

Commission européenne, B-1049 Bruxelles / Europese Commissie, B-1049 Brussel - Belgium. Telephone: (32-2) 299 11 11.  
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EUROPEAN COMMISSION

Brussels, 18.3.2010

2000/4384

C(2010) 1393

Your Excellency,

I would again draw your attention to the outstanding measures necessary to comply with the judgement 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"*

Under Article 260(1) of the Treaty on the Functioning of the European Union, if the Court of Justice finds that a Member State has failed to fulfil an obligation under the

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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.

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 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. 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.

As the European Commission had received only incomplete information about the measures taken by your Government to comply with the judgment of 3 July 2008, and as it took the view that Ireland has failed to fulfil its obligations under Article 228 of the Treaty establishing the European Community, a letter of formal notice was subsequently sent to the Irish authorities dated 25 June 2009 (ref. Ares (2009) D/3677) addressing the outstanding measures required. The Irish authorities responded by letter dated 9 September 2009 (ref. Ares (2009) A/8598).

Their reply provided information in relation to three issues: proposed legislation necessary to address the requirements of the judgment; further clarifications in relation to Circular PD 6/08; and an update of action taken at Derrybrien wind farm.

In relation to the proposed legislation, the Commission notes that the proposed measures described in the letter of 9 September 2009 do not provide sufficient detail to allow the Commission to properly assess their capacity to meet the requirements of the judgment. Furthermore, Ireland does not provide a timeframe for adoption of the legislation.

To the extent that it is able to do so, the Commission nonetheless provides the following observations on the outline of proposed measures presented by Ireland.

As regards the proposed curtailment of the scope of retention applications, the Commission welcomes this in principle, however it cannot comment in detail without seeing the precise final provisions and full statutory framework within which these provisions will be set. In relation to the transposition of relevant provisions of the EIA Directive and provision for a "substitute consent" process and remedial EIA (paragraphs 1. b) and c) in the letter date 9 September), the Commission welcomes these proposed measures in principle as being likely to contribute towards satisfying the judgment, however it is necessary for the Commission to have the final adopted texts to be able to fully assess whether compliance is achieved.

With regard to the limited provision for the regularisation of certain unauthorised quarry developments under para. 1d), the Commission again notes that it is unable to fully assess the acceptability of these measures in the absence of detailed statutory provisions. It would observe that such provisions carry the risk that they will run counter to the Court's position, set out under para. 57 of the judgment, that any regularisation of unlawful operations remain 'an exception' (para. 57 of the judgment). In relation to the proposal to strengthen the planning enforcement system, the Commission again welcomes such moves, however to date it is unable to assess the extent to which these would contribute towards complying with the requirements of the judgment. It would appear that current enforcement provisions still allow considerable latitude for tolerance of unauthorised developments which require screening for the purposes of EIA. By way of illustration, the Commission would refer to a recent judgment from the Irish Circuit Court of 27 January 2010 in which the court used the procedural possibility of adjournment to further defer making any enforcement decision against a waste transfer station in County Kerry which had operated for 4 1/2 years without development consent, thus allowing the project to continue to operate without such consent.

As regards Circular PD 6/08, the Commission is not satisfied that Ireland's response unequivocally confirms that the screening of proposed development for the purposes of EIA will only occur prior to the execution of any physical works on a project and that ex post screening is legally precluded. In any case, the circular letter is in itself insufficient to satisfy the need to comply with the Court judgment by way of binding legislation.

In relation to Derrybrien wind farm, the Commission notes that a remedial EIS has been agreed to 'in principle' by the operators but that this depends on the enactment of the proposed substitute consent provisions mentioned above and that the proposed measures to comply with the judgment in relation to the wind farm thus remain outstanding.

In the light of the foregoing, the Commission concludes that Ireland has still not taken all of the measures it was required to take to comply with the judgment of the Court of Justice, dated 3 July 2008, in Case C-215/06, *Commission v Ireland*, that is to say that the obligations under Articles 2, 4 and 5 to 10 of Directive 85/337/EEC 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 have not been fulfilled.

The Commission invites your Government, in accordance with Article 260(2) of the Treaty on the Functioning of the European Union, 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 refer the case to the Court of Justice as provided for in Article 260(2) of the Treaty.

The Commission would also draw your Government's attention to the financial penalties that the Court of Justice may impose, under Article 260(2) of the Treaty on the Functioning of the European Union, on a Member State that fails to comply with its judgment.

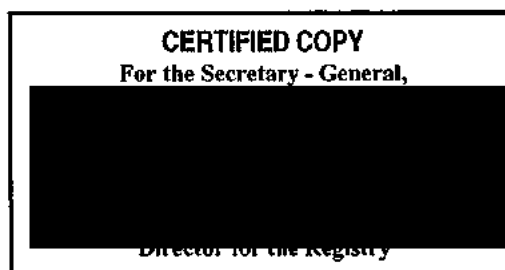
Under this same article and on the basis of its Communication of 13 December 2005 on the application of Article 228 of the EC Treaty<sup>1</sup>, when the Commission refers a case to the Court of Justice, it specifies the amount of the lump sum, of the penalty or of both, to be paid by the Member State concerned, which it considers suited to the circumstances.

Yours faithfully,

For the Commission

Janez POTOČNIK

Member of the Commission



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<sup>1</sup> SEC (2005) 1658 final.