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To <Public.Participation@unece.org>

cc

bcc

Subject "C/54" Email 23

From: BURSA Dorota Anna (ENV)
Sent: Monday, June 14, 2010 11:14 AM
To: BURSA Dorota Anna (ENV)
Subject: FW: CHAP (2010) 00645 and Planning Decision related to Dublin Port

From: ENV CHAP
Sent: Monday, June 14, 2010 8:47 AM
To: WEGERDT Patrick (ENV); WALKER Margaret (ENV)
Cc: ENV CHAP A
Subject: FW: CHAP (2010) 00645 and Planning Decision related to Dublin Port

[concerne chap\(2010\)645](#)

From: Pat Swords [mailto:pat.swords.chemeng@gmail.com]
Sent: Saturday, June 12, 2010 5:19 PM
To: ENV CHAP
Cc: info@dublinport.ie
Subject: CHAP (2010) 00645 and Planning Decision related to Dublin Port

To: CHAP (2010) 00645

In previous correspondence (see attached) I have already highlighted the failure of the Planning Board in Ireland (An Bord Pleanala) to comply with Directive 2003/35/EC and present the main reports and advice on which it is making its decisions. In particular with regard to Natura 2000 legislation the absence of the necessary Management Plans for the designated sites.

This week An Bord Pleanala refused planning permission for the necessary and critical expansion of Dublin Port, see: <http://www.pleanala.ie/casenum/pa0007.htm> . The reason, the presence of a designated European site. Just like the Corrib and

other developments no Management Plan was presented for this site, neither does the decision of the Planning Board make available the main reasons and considerations on which the decision was made outside of vague ill defined references to the word significance, for which no qualitative or quantitative basis has been established. Note it is most certainly not the developer's duty to prepare a Management Plan for a designated site as part of his Environmental Impact Assessment. Furthermore while the Dublin Bay site had to be expanded and re-designated in 2008 on foot of a decision in the European Court, C-418/04, there was an absence of Management Plans for the previously designated areas dating back to 1999:

<http://www.npws.ie/en/media/Media,4926,en.pdf> .

In fact the whole implementation of Natura 2000 in the Irish Republic is a complete mess due to the inability of the authorities to establish proper Management Plans for the necessary conservation measures, see report in the Irish media below on 4th June 2010:

The European Court of Justice will now be asked to clarify provisions of the EU habitats directive and the sides have been given two weeks to draft appropriate questions for that court. The final decision on the exact question to be referred will be made by the Supreme Court.

The case centres on the interpretation of article 6.3 of the habitats directive which stipulates that any plan likely to have a significant effect on a protected site must be appropriately assessed as to its implications for the site's conservation objectives.

Article 6.3 also prohibits approval of any plan which adversely impacts on the "integrity" of the site.

In allowing the bypass, An Bord Pleanála found the road would have a "localised" severe impact on the Lough Corrib Special Area of Conservation but would not adversely affect the "integrity" of the site.

The Attorney General disagreed and argued that, as the project involved the destruction of some protected limestone paving which could not naturally renew itself, this breached Article 6.3.

The State says the board appeared to have taken the view that the integrity of the site was not breached because only a portion of the

protected site was affected. However, the State believes the directive contains a systematic prohibition on doing anything causing permanent deterioration to a protected habitat.

The State wants the European court to define what is meant by “adverse impact” on the “integrity” of a protected site and particularly to define what is meant by “integrity”.

Developers and those that earn their living in industrial development cannot go about their lawful business in Ireland given the circumstances above and attached. The EU Environmental Acquis are certainly not being properly implemented by the Member State and as has been highlighted by myself many times before, there is no effective Access to Justice, the State having failed to comply with this requirement of Directive 2003/35/EC.

Pat Swords BE CEng FIChemE CEnv MIEMA



The Failures to Properly Implement EU Environmental Legislation in Ireland 12-4-2010.pdf