



Title	An Analysis of the Implications of the Revised EIA Directive in the Republic of Ireland
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Publication date	2016-01-01
Publication information	Fry, John, Berna Grist, and Ainhoa González Del Campo. "An Analysis of the Implications of the Revised EIA Directive in the Republic of Ireland." UVP-Gesellschaft, January 1, 2016. https://doi.org/10.17442/uvp-report.030.17 .
Publisher	UVP-Gesellschaft
Item record/more information	http://hdl.handle.net/10197/28686
Publisher's version (DOI)	10.17442/uvp-report.030.17
Notes	Publisher-supplied DOI does not function

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An Analysis of the Implications of the Revised EIA Directive in the Republic of Ireland

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Die Auswirkungen der UVP-Änderungsrichtlinie in der Republik Irland

Ireland committed to transposing the revised EIA Directive 'within deadline', and some provisions were anticipated in revising the EIA 'Advice Notes' and 'Guidelines'. Several measures (including a consent framework with built-in decision-making timescales) already exist, and only require adjustment. Others (such as competent authorities being required to possess 'sufficient expertise') will exacerbate administrative resource limitations – as will the much-enhanced screening process (including documented findings of no significant impact) and compulsory project monitoring. However, a framework for these has already been laid by legislative amendments. Ireland has already attempted to address Commission concern to provide linked AA/EIA assessments, and for EIA/Licensing, so the Directive's provisions require thought. Nevertheless, AA/EIA links have been partially anticipated through the development of an Integrated Biodiversity Impact Assessment methodology, while recent streamlining of EIA/Licensing interactions will hopefully address the issue even though the processes remain separate. That the 'Impact Assessment Report' should be prepared by 'competent' experts causes concern, since Ireland never previously insisted on proofs of competence, and there is no clarity over how competence might be determined. On the other hand, Ireland arguably conducts unnecessary EIAs and may have to raise its Annex II thresholds to comply.

Abstract

Irland hat sich verpflichtet, die UVP-Änderungs-Richtlinie innerhalb der vorgegebenen Frist umzusetzen. Einige Bestimmungen wurden bei der Überarbeitung der UVP-Ratgeber und -Leitlinien schon vorweggenommen. Mehrere Anforderungen – wie zum Beispiel die Zustimmung innerhalb einer bestimmten Frist – existieren bereits, so dass hier nur kleinere Anpassungen nötig sind. Andere Bestimmungen dagegen – zum Beispiel hinsichtlich des Fachwissens der zuständigen Behörden – werden die ohnehin knappen administrativen Ressourcen verringern. Das gleiche gilt für das verbesserte Screening-Verfahren (einschließlich dokumentierter Umwelterheblichkeitsprüfungen mit negativem Ausgang) und das obligatorische Monitoring. Ein Rahmen für Screening und Monitoring wurde jedoch schon vor den Gesetzesänderungen geschaffen. Irland hat versucht, die Bedenken der Kommission ernst zu nehmen und hat integrierte FFH-VP- und UVP-Verfahren eingeführt. Es hat über die Integration von UVP und Genehmigungsverfahren nachgedacht, soweit es die Richtlinie erfordert. Die Methode „Integrierte Biodiversitäts-Verträglichkeitsprüfung“ hat die Integration von FFH-VP und UVP teilweise schon vorweggenommen. Gleichzeitig werden die jüngsten Straffungen von UVP und Genehmigungsverfahren dieses Thema hoffentlich ebenso aufnehmen, auch wenn es bei zwei getrennten Prozessen bleiben wird. Dass der Umweltbericht durch „kompetente“ Experten erarbeitet werden soll, gibt Anlass zur Sorge, weil Irland bisher nie auf den Beweis von Qualifikationen bestanden hat. Außerdem ist unklar, wie die gefragten Kompetenzen nachgewiesen werden sollen. In Irland werden derzeit sicher überflüssige UVP-Verfahren durchgeführt. Deshalb müssen möglicherweise die Schwellenwerte für Anhang II-Vorhaben angehoben werden.

Zusammenfassung

Ireland; Environmental impact assessment; Strategic environmental assessment; Habitats appropriate assessment; EU law; National law; Environmental law

Keywords

Irland; Projekt-Umweltverträglichkeitsprüfung; Strategische Umweltprüfung; FFH-Verträglichkeitsprüfung; EU-Recht; Nationales Recht; Umweltrecht

Schlagworte

Introduction

This paper catalogues and analyses implications of particular Irish relevance from transposing the revised Environmental Impact Assessment (EIA) Directive 2014/52/EU in the Republic of Ireland (RoI). In Ireland, EIA is embedded in the planning control framework

specified by the Planning and Development Acts 2000 to 2015 (hereinafter 'the Planning Acts').¹

The competent authorities are primarily local planning authorities and the planning appeals board, An Bord Pleanála (ABP) – the most up-to-date synthesis of the pre-Directive position being contained in *Guide-*

lines for Advice Notes (DECLG 2013). Under the Local Government Reform Act 2014, there are 31 planning authorities, comprising 26 county councils, 2 combined city and county councils, and 3 city councils.

ABP acts as an appellant body in relation to such decisions (ABP 2016), but functions as sole competent authority for local authority projects requiring EIA, and in relation to applications constituting 'strategic infrastructure development'.² It also approves exemptions sought for State developments subject to EIA, other than those for defence.³ Separate consent procedures exist for some project categories, in particular significant road/motorway developments and agricultural projects. Issues examined here include transitional arrangements, and the implications of additional screening and determination procedures, expanded documentation and certification requirements, procedural linkages, compulsory monitoring, and expanded scoping and public participation.

Transition to Transposition

Ireland publicly committed to transposing the revised EIA Directive 'within deadline' (Oireachtas 2015), although the full administrative implications cannot be determined in absence of necessary domestic secondary legislation. Directive Recital 39 indicates it is "appropriate to lay down transitional measures" leading up to the deadline, but there has been no formal Irish move in this regard. However, there has been a significant attempt to anticipate the Directive's provisions in current consultation drafts of revised EIA *Guidelines* and *Advice Notes* aimed at developers (EPA 2015a, b) – the primary implications of changes being summarised in Appendix II of the former.⁴ Those documents probably provide the closest available insight to official thinking although, given their focus on preparing the developer's Environmental Impact Statement (EIS), they do not address implications for changing administrative procedures. In the interim, pro-active developers/consultants acknowledge taking account of future provisions during preparation of recent EISs (e.g. McCarthy Keville O'Sullivan 2014; EIS Ltd. 2016).

Several Directive requirements are already mirrored under existing Planning Acts. This legislative code only requires minor adjustment in some respects, but significant amendment in others. Those Acts include an existing consent framework with built-in decision-making time-scales, as well as provisions for a transboundary consultative framework.⁵ In fact, the RoI's existing 5-week (i.e. 35 day) public consultation period⁶ exceeds the 30-day minimum demanded by the Directive. However, the requirement to provide for coordinated EIA and Natura 2000 Appropriate Assessment (AA) procedures (Article 2) will require some redrafting of the Acts.⁷ Furthermore, renewed emphasis on validating the screening, assessment, and transparency dimensions of EIA will exacerbate existing administrative resource limitations for competent authorities.

In line with Directive requirements, the existing planning consent framework is independent from government control – although decisions have to have re-

gard to government policy.⁸ Similarly, consents in the land-use planning arena must "have regard to" the relevant city or county development plan, and that plan itself must "be consistent with" national and regional development objectives contained in the National Spatial Strategy (The Stationery Office 2002) and regional planning guidelines (i.e. documents at higher levels in the planning hierarchy). Those tiers are both linked and subject to nested assessments, since (even before the Strategic Environmental Assessment (SEA) Directive) the 2000 Planning Act required finalised guidance/plans to be accompanied by reports addressing their environmental effects. The Directive's requirement for no conflict of interest within decision-making (Recital 25/Article 9a) is also already provided for by the Acts. However, the system is open to being undermined by conflicts between separate government policies: an as yet unpublished report argues that the 2003 administrative Decentralisation Plan undermined the same government coalition's National Spatial Strategy (Bardon 2016a). The resulting confusion, which was clearly accompanied by some waste of natural resources as well as socio-environmental impacts on affected civil servants, highlights a need for vigilant policy assessment procedures.

Recital 38 and the new Article 10a call for "effective, proportionate and dissuasive" penalties for infringement of national provisions. The term 'enforced' is only implied, but is of relevance to Ireland, which was specifically criticised in 2008 by the European Court of Justice for having an inadequate and ineffective system of planning control and enforcement.⁹ The planning code made provision for regularisation of unauthorised development by means of 'retention' permission, irrespective of whether that project should have been subject to prior EIA. The Court held that Ireland had not properly transposed EIA measures because its law on retention permission undermined the Directive's "preventative purpose" (Grist 2012: 137). While this loophole in the Planning Acts has now been closed (DECLG 2012),¹⁰ there is still concern that general failure to enforce the planning code has socio-environmental impacts and frustrates European judgements (e.g. Lowes 2011).

Screening and Determination

Recital 27 suggests that some Member States demand EIA for projects that do not merit it. Ireland acknowledges having set comparatively low thresholds for most Annex II projects, thereby admittedly minimising case-by-case screening (DEHLG 2004). This exceeding of the requirements of a Directive was described by the Irish High Court as "gilding the European lily",¹¹ and may reflect resource limitations that resulted in formal, rather than workable transposition of these provisions. Case-by-case screening accidentally generated considerable experience for home-grown environmental consultancies, and arguably protected this economic sector from excessive penetration by UK firms. However, it also initially created a situation where some project types (e.g. quarrying) had appreciably different

screening thresholds (and, hence financial implications) on opposite sides of the border with Northern Ireland. Both official guidance on sub-threshold screening (DEHLG 2003) and the Revised Guidelines (EPA 2015a) stress that there should be little need for sub-threshold EIA, but this does not address previous arguments that the RoI conducts too much EIA. However, responding to Recital 27 as veiled criticism of Ireland would result in raised thresholds and more case-by-case screening, and present further resource and skillset implications for the competent authorities.

Even without changes to thresholds, the revised EIA Directive (Recital 29, Article 4 paragraph 5(b) and Annex IIA) provides for a much-enhanced screening process that inevitably poses resource implications for planning authorities. Since 2011, where the likelihood of significant effects on the environment cannot be excluded, the Planning Regulations require that the planning authority determines whether EIA is required. Such determination, and the main reasons and consideration on which it is based, must "be placed and kept with the documents relating to the planning application".¹² Similar provisions apply to consideration of appeals by ABP, therefore making these determinations (including Findings Of No Significant Impact – FONSI) more public should be a minor procedural adjustment.¹³ Existing legislation also provides a decision-making time-frame for addressing applications, but the requirement that screening decisions must be given 90 days from the date on which the developer submits all requisite information will further tax planning authority resources. The effect of these enhancements to screening is to create a further tier in the development consent system and additional risk of judicial review proceedings. Handy (2014) is of understandable opinion that the changes effectively create a "mini-EIA" stage in the overall process.

Similar resource implications will arise from the requirement that competent authorities must substantiate eventual consents (Recital 34). Implicit re-emphasis that it is the authority that actually conducts the EIA, albeit using information supplied by the developer, was anticipated by an earlier judgement (Case C-50/09) and by subsequent legislative changes (Grist 2013: 137-8) – collectively implying that Irish authorities should already be acquiring "sufficient expertise". However, future planning consents will also be required to incorporate mitigation and monitoring measures (and generate confirmation that mitigation has been applied). Compulsory monitoring has been described as "significant departure from current practice" (Handy 2014), and the developer's additional burdens arising from the obligation to monitor may encourage an avalanche of last-minute consent applications under the un-amended provisions of the codified EIA Directive 2011/92/EU. At a practical level, the approach to monitoring for "significant adverse effects" (Recital 35, Article 8a, 4) will have to be clarified since what might turn out to be significant cannot be fully determined in advance of fairly broad-spectrum monitoring, however well-scoped the potential effect might have been.

Documentation and Quality Controls

It remains to be seen whether Environmental Impact Assessment Report (EIAR – Recitals 30-34 etc.) is a generic term, or whether Ireland will have to formally change EIS to EIAR – although this would helpfully reinforce the sea-change following the amendment. The Revised Guidelines (EPA 2015a) note this uncertainty, but retain older terminology in the interim.¹⁴ Either way, the information to be contained in such a report has been strengthened, including a requirement (Annex IV, paragraph 10) for a reference list detailing sources as well as mapping and spatial data used for the descriptions and assessments – although, interestingly, the draft Advice Notes indicate that references should not be included in the Non-Technical Summary (EPA 2015b). This referencing requirement aligns with increased use of spatial data and mapping to support environmental policies and activities that may impact on the environment, as contemplated in the INSPIRE Directive. It is likely to translate into additional skill and resource requirements, particularly for competent authorities, for data collation and mapping.

In future the 'EIAR' should be prepared by 'competent' experts (Recital 33, revised Article 5 paragraph 3), which causes concern since Ireland never previously insisted on proofs of competence, and begs the question of what this constitutes legally as the Directive does not provide any definition. Indeed, three separate requirements for competency are being raised:

1. that of the organisation/consultancy that produces the overall EIAR;
2. that of the various specialist contributors to it; and
3. that of the competent authority.

However, the Directive only requires the latter in respect of examination of the EIAR, and makes no reference to examination of expert submissions from third parties.

The Revised Guidelines flag that legal regulation, official guidance and/or court interpretation of 'competent expertise' will have to emerge (EPA 2015a), but there is no clarity over how these might be administered. Neither the EPA nor ABP, which currently have differing statutory roles in relation to impact assessments, seem framed to assume the role of a national competent authority in this respect. Furthermore, informal experience of jurisdictions that already require certification of 'experts' suggests that it sometimes leads to rigid over-centralisation of procedures.

An individual specialist's competence could be reasonably assumed from the possession of academic qualifications, membership of relevant professional bodies, or (with disciplines such as archaeology) from holding a professional licence to practise. However, previous planning case law held that a Colonel with no academic qualification who was the Irish Army's official military historian could not be dubbed "an amateur historian", and should be formally recognised as an expert witness.¹⁵ To paraphrase one major Irish expert:¹⁶ the academic background of any '-ologist' is a starting point, but a good part of any competent contribution comes from that expert's abilities to read engineering

drawings and to 'think outside of the box', not to mention being embedded in a good production team familiar with the EIA process.¹⁷ In this respect, University College Dublin ran a successful continuing professional development 'Diploma in EIA and SEA Management', which provided 'process' exposure rather than certification of EIA capability in any specialism. That ran for 22 years until demand collapsed during the post Celtic-Tiger recession, but may well need reviving in some form.

Initially, Ireland could resort to the tried and tested blanket mechanism of 'certifying' all individuals and organisations historically engaged in EISs prior to May 2017.¹⁸ However, this would leave unanswered questions regarding new entrants:

1. how to recognise experiential (as opposed to qualification-based) expertise – such as that which exists within environmental NGOs such as BirdWatch Ireland; and
2. the additional 'competence demonstration' hurdle to be faced by new companies wishing to join the EIA consultancy pool.

Given the geographical proximity and administrative similarities between the jurisdictions, an obvious fallback position would be to place greater reliance on forms of certification offered by the UK-based Institute of Environmental Management and Assessment (IEMA). Several specialists operating in the RoI are already individual members of that organisation, and since April 2011 IEMA has offered voluntary accreditation to active consultancies in the UK and Northern Ireland (Fischer & Fothergill 2014). This 'IEMA Quality Mark' is based on consistent demonstrated compliance of completed EISs with seven performance standards.

Recital 32 and Article 3(b) also stress that data presented should be complete and of sufficiently high quality. Validating data as fit-for-purpose implies adoption of a clear verification procedure that also has resource implications in a dynamic area. That mapped assessment approaches are increasingly being adopted is a broadly positive development, but the fact that many are unsupported by associated quality control mechanisms questions current ability to produce accountable assessment outputs (González 2012).

Procedural linkages

Some Directive adjustments highlight discrepancies between Ireland's interpretations of the EIA and SEA Directives, and have triggered knock-on changes. SEA's linkage of Architecture and Archaeology to Cultural Heritage (CEC 2001) had thrown Ireland's previous EIA categorisation of these under Material Assets into relief. That, in turn questioned what actually constituted 'material assets' in an Irish context – especially given a previous judgement that a dairy herd and its 'goodwill' reputational value could not be classified as such. The draft Advice Notes (EPA 2015a) follow the revised interpretation and broadly categorise material assets as physical and infrastructural resources in the environment. Although this listing encompasses property,¹⁹ economic activity (which arguably conforms better with

a European law concept of material assets) is listed under Population and Human Health.²⁰ Reassuringly the new material assets category includes Agronomy, thereby redressing long-standing uncertainty of where in an EIS to address potential impacts upon the managed (i.e. agricultural) environment.

Following the EIA realignment of architecture and archaeology under cultural heritage, the draft Advice Notes boldly raise prospects of assessing intangible cultural heritage (EPA 2015b).²¹ This breaks new ground, since the document acknowledges that the intangible cultural heritage part of the UNESCO Convention has yet to be ratified here. As in North American EIA, minority languages are an obvious consideration, and designated Gaeltacht (Irish-speaking) areas are understandably specified. Indeed, since the 2000 Planning Act, it has been mandatory for development plans to include an objective for "protection of the linguistic and cultural heritage of the Gaeltacht including the promotion of Irish as the community language",²² and regard must be had to the development plan when granting development consents. However, giving consideration to oral traditions and folklore need to be explored carefully, since much 'tradition' is not necessarily ancient and has already evolved under pressure from outside influences and technological changes. What is currently broadly presented as Irish 'traditional' music would not be recognisable had it not been for intermittent absorption of new musical instruments from uilleann pipes to bouzoukis, and cross-fertilisation from non-oral media and external musical genres. The assessment difficulty will lie in identifying those impacts that might interrupt the process of cultural continuity, rather than those introducing uncomfortable innovation. Perhaps more worryingly, the Advice Notes specifically identify "major religious conversion" as an issue of potential concern.²³ This arguably rear-guard action in an increasingly secular country also raises prospects of tension with the rising Muslim population whose new mosques tend to be significant structures that might demand EIA.

Recital 37 calls for coordinated assessment procedures for AA and EIA, and for EIA and various licensing procedures. Combining linked AA/EIA assessments requires thought, especially given Ireland's history of European Court of Justice judgements relating to the Birds and Habitats Directives (Lowes 2011). As a result, Irish procedures for AA under both EIA and SEA have been considerably strengthened in recent years (DEHLG 2009). Although an Irish AA/EIA consent process has yet to emerge, their coordination has been partially anticipated through development of an Integrated Biodiversity Impact Assessment (IBIA) methodology (González et al. 2012, 2013a, b). IBIA promotes the streamlining of AA and EIA (or SEA) processes by integrating the assessment requirements and thus comprehensively examining biodiversity considerations. Therefore, this could partly address the new requirement under Article 3 paragraph 1(b) to address biodiversity (see 'scoping' section).

The Directive's call for combined EIA-licensing pro-

cedures (e.g. under the Waste Framework and Industrial Emissions Directives) seemingly underlines Commission opinion that earlier Irish attempts at rationalisation did not meet the mark. The 1992 Environmental Protection Agency Act had precluded planning authorities from considering issues pertinent to EPA licensing procedures (Ryall 2009). The 2000 Planning Act amended both the EPA and Waste Management legislation to allow planning authorities and ABP to refuse permission for licensable activities where they consider that, notwithstanding EPA licensing of the activity, the development is environmentally unacceptable in a planning context. However, planning permission cannot be granted subject to any conditions for the purpose of controlling emissions from the activity. Despite this, EU Commissioner Margot Wallström gave an Opinion on Ireland (C (2001) 2253) that those provisions did not address the problem of an integrated process. The division of responsibilities between planning authorities (land-use consent) and the EPA (licensing) was much resented by communities where such developments were proposed, but two challenges in Irish Courts were unsuccessful. Finally, in March 2011, the European Court of Justice held that Ireland had not properly transposed the EIA Directive's Articles 2 and 3 – although it accepted that the decision-making process could be apportioned between two separate bodies, provided the aims of the Directive were secured.²⁴ With effect from September 2012, the 2000 Planning Act was amended to provide for co-ordination between the licensing and planning systems (Grist 2012: 171-2). However, it remains to be seen whether Irish procedures are now sufficiently integrated to comply with the revised EIA Directive.

Scoping

Similarly, Recital 31 and Annex IV 2/3 stress the need to evaluate 'reasonable alternatives' – including, as appropriate, the likely evolution of the environmental baseline. The draft *Revised Guidelines* (EPA 2015a) do not highlight these reaffirmed emphases, but do comprehensively consider in-project alternatives.²⁵ There might be scope in this regard to transfer some of the best practice recommendations generated by recent Irish guidance for developing and assessing alternatives in SEA (González et al. 2015). Any re-emphasis in Irish EIA on evaluating evolution of the environmental baseline would highlight another discrepancy with SEA, since official advice on land-use planning SEA is not to treat the 'no proposal scenario' as a reasonable alternative (DEHLG 2004; González et al. 2012).

As with SEA, 'human health' is now specifically identified as being part of the 'human beings' assessment component – the priority of that change being arguably emphasised by forming Recital 1. This is welcome since the 'human beings' component of any EIS/SEA has always been rather weak. Ignoring the fact that statutory planning decision periods do not allow for much significant Health Impact Assessment, this emphasis will create another tension since it was previously determined that the controversial issue of potential health

effects from electro-magnetic fields associated with power transmission were to be addressed under energy regulation legislation rather than EIA. This is also an issue for other projects (e.g. quarrying and wind farms).

In contrast, 'biodiversity' now replaces the original 'flora and fauna' in EIA, while the SEA directive has both categories. Arguably, such replacement incorporates a weakness into the EIA process, as consideration of biodiversity is somewhat different from that of individual species/habitats of concern. The Irish draft Advice Notes and Revised Guidelines retain emphasis on individual species and habitats through links to the Birds and Habitats Directives, but evaluation of general 'non-Natura' biodiversity currently seems less well served. As has been argued elsewhere (Fry et al. 2011), at what point will the conservation needs of broad biodiversity groupings such as 'pollinators' be assessed? Having said that, the National Biodiversity Data Centre is accumulating and mapping baseline data on non-Natura species that could support broader interpretation of biodiversity in EIA.

Public Participation

Article 8 has been amended in what, at first glance, might appear an insignificant change for Ireland, since national legislation contains a well-developed third party right of appeal. The results of consultations and the resulting information must now be "duly taken into account" in decision-making. This provision will be welcomed by environmental NGOs and community groups who, all too often, feel that their carefully collated observations are merely glanced at, then set aside. Its purpose is to ensure participation is not reduced to a box-ticking exercise. Handy (2014) considers that, in some cases, Article 8 may mean widespread public opposition to a given project will have to be taken into account in reaching a decision. This is an interesting possibility in a country where there has been significant opposition to major energy infrastructure developments such as high voltage electricity lines and wind energy.

Recital 18 and amended Article 6(c) paragraph 5 call for a central portal to allow public access to information. This can be linked to the requirement in amended Article 12 paragraph 2 to supply data on the EIA process. When the original EIA Directive was transposed, an associated information gathering and collation system was set up within the State's Environmental Research Unit (Brangan 1996). At the time this ad-hoc system, motivated by a single civil servant, appeared more effective than the UK's statutory provision for centralised data collection. After 1992, ERU incorporation into the EPA was mirrored by establishment of an environmental information office (ENFO), which housed that national collection of EISs. Unfortunately, cost-saving measures later reduced this much-used public facility to virtual status – a move that now seems likely to need reversing. EISs are currently difficult to track down – although, once identified, competent authorities do facilitate requests for a copy (al-

beit possibly motivated by freedom of information and environmental justice legislation). A centralised EIS repository would also facilitate a formalised quality review of the process. Shortly after transposition of the EIA Directive, the ERU published what amounted to an officially-sponsored review of EIS quality based on statements in its collection (Dancey & Lee 1993). Several subsequent student reviews have been conducted, although few have been formally published (e.g. O'Shea 1994; McGrath & Bond 1997; Fry 2000; Fry et al. 2014), and the time seems appropriate for another official overview using the new Advice Notes and Guidelines as a performance benchmark.

New Dimensions to Projects

Recital 22 stresses the need to consider a demolition phase in some projects. It is assumed that this addresses initial site clearance, but the overall terminology is ambiguous and could demand more frequent consideration of decommissioning. Although Annex IV, paragraph 1(b) requires description of "requisite demolition works" (where relevant) before describing "land-use requirements during the construction and operational phases", the Recital, Annex IIA paragraph 1(a), and Annex IV, paragraph 5(a) could be read as placing 'demolition' at the end of the project cycle. An argument can be made from a strong sustainability perspective that all consents should give some consideration to decommissioning, since a recoverable land-base is the only truly sustainable element of finite projects. This is particularly relevant to short life-expectancy wind energy projects, which currently constitute a large fraction of Irish EIA.

On balance the Directive's provisions must be assumed to mean demolition prior to new-build and can be seen as a follow-up to earlier case law applying to both Ireland and the UK. The earlier British case concerned proposed demolition of a redundant brewery building; objectors argued that demolition was a 'project' within the meaning of the Directive and should be subject to EIA. In May 2010, the British court found that the proposed demolition could not be treated as falling within any of the classes of project specified in the annexes to the EIA Directive.²⁶ However, the issue of whether the Directive was capable of applying to demolition works was noted as likely to be resolved in a pending case being brought by the European Commission against Ireland. In March 2011, the European Court of Justice gave judgement in a case concerning destruction of archaeological remains in the course of motorway construction, which was permitted under the Irish National Monuments legislation. The Court pointed out that the definition of "project" in the Directive could not lead to the conclusion that demolition works could not satisfy the criteria of that definition. By excluding demolition works from the scope of legislation transposing the EIA Directive, Ireland failed to fulfil its obligations under the Directive – as indeed had the UK.²⁷

Recital 13 identifies future necessity to consider both potential contributions of projects to climate

change and the impacts of climate on projects. Climate change offset has been regularly advanced as part of the rationale for wind farm developments, but resilience has been arguably under-addressed – although flood risk assessments are increasingly being incorporated into SEA. Ireland and Britain both experienced extensive flooding during unusually heavy winter rainfall – the recovery and clean-up costs for Ireland being calculated as € 40 million higher than official € 60 million estimates (Bardon 2016b). This recent experience is expected to influence the forthcoming Irish general election, the outcome of which may again be a coalition supported by independents with special interest demands. Therefore, it could be that climate resilience provisions will be given greater-than-expected emphasis when the transposing legislation materialises.

Conclusions

This paper discussed Ireland's position in transposing the revised EIA Directive. A key message is that some essentials (e.g. consent and public involvement procedures with specified time-frames) pre-exist in the planning control framework, although opinion suggests that new tensions may arise from giving enhanced regard to public opinion. Recent legislative adjustments and research methodologies are likely to have brought Ireland close to meeting other expectations (e.g. integrated AA/EIA or EIA/Licensing consents, addressing alternatives). Providing publicly available process information and referencing data/map sources could be fairly easily achieved, but key short- and long-term challenges remain (e.g. enhancing skillsets and resources, and monitoring enforcement). Although the practicalities are reasonably clear, major resource hurdles will result from establishing enhanced screening, while accreditation presents a massive organisational task. Although Ireland has never exploited the standard Directive option of laying down stricter provisions, opportunities exist to go beyond requirements in extending validation to specialist third party submissions. A significant strength lies in the recently revised EIA Guidelines and Advice Notes, and these documents offer opportunities for benchmarking performance and accrediting expertise. The current draft versions also push boundaries in, for example, addressing intangible cultural heritage – something that needs to be encouraged despite current conceptual ambiguities.

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