

## Implementation of Environmental Legislation

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Thank you very much Mícheál and I'd like to thank the EPA for inviting me to attend today, to speak. It's really been a very informative and interesting day.

My presentation today will be divided into two parts. First of all I will look at the EU perspective: What is this environmental legislation? What do we understand by implementation? How the commission tries to ensure that there is implementation and particularly the tool that we have in terms of infringement procedures.

The second part of my presentation will look more at the situation in Ireland. First of all, what the current situation is and secondly, how I see the challenges for the future.

So the legislation, as we know, it's a wide variety of legislation. We also have very significant horizontal type legislation such as access to information, environmental impact assessment. We have a huge body of legislation, more than 150 legal acts and most of these acts are directives and that means that transposition and implementation is all the more important in this area of EU law.

What does the Commission mean by implementation. That means for us the full integration of the directives into national legislation. The legislation must be properly applied, on the ground, in factual circumstances. We've seen over the last couple of years an increasing emphasis by our Commissioner on implementation.

And briefly to show you the Commission's approach in terms of policy orientation, we've had three communications which touch on this area over the last few years. In 2007 we had a communication on implementation which covered all commission policies and there was a particular emphasis there on implementation of Court of Justice judgements, which I think for Ireland is a significant issue.

Secondly we had a communication in 2008 which was specific to the environment and very much focused on enforcement. We recently adopted a communication, in March which is very much emphasizing information and responsiveness at member state level. This last communication, particularly, is designed to feed into the whole process of preparing the 7th Environmental Action Programme.

This is still very much at the stage of internal discussion within the Commission. But perhaps I'll say a few words about the 2012 communication. We have the two key principles of focusing on better gathering of knowledge and dissemination of knowledge, coupled with better responsiveness to problems on the ground. Then in the context of those two broader principles we have three key issues which we identify: access to justice, inspections and

surveillance, and thirdly, complaint mechanisms. In relation to all three, we will be looking at possibly going beyond the framework that we have in place at the moment.

Just to give you information on what is an infringement procedure. This is really the tool the commission uses to ensure implementation by the member states of our directives. We have three origins. We receive a lot of complaints from individuals, from NGOs about implementation of environmental law. Secondly we have quite a number, particularly for Ireland, of petitions which is where a citizen can go directly to the European Parliament Petitions Committee and raise a question and the Commission has to answer the question. We also get questions from members of the European Parliament.

We also, at our own initiative, initiate infringement proceedings. We have three types of infringements. If you take a directive from the beginning, we have a directive which needs to be transposed into national legislation throughout the EU. So each member state needs to adopt legislation and communicate this legislation to the Commission. If they don't do so by the deadline set in the Directive then the Commission opens a Non-communication case. And in fact for Ireland over the years, there have been plenty of Non-communication cases but we haven't had one for at least a year. Which is a good thing.

The Irish cases we have now are either Non-conformity or Bad application. Non-conformity: This means that the legislation is there but we believe it doesn't comply with the directive. And very often non-conformity cases come from our own initiative when we look at transposition across the EU of a particular directive and then we pursue a number of member states where we feel that a directive has not been properly transposed.

And then the third type of infringement is Bad application and this usually originates in a complaint. I won't delay on this, these are the articles of the treaty that are relevant for infringement procedures. Article 258 is the principle one in terms of the most procedures but again in terms of Ireland Article 260 is important. If a member state doesn't comply with an ECJ ruling, the court can impose financial penalties and we also have the possibility for the court to lay down interim measures in cases where there's a real danger of damage to the environment.

The infringement procedure itself, the formal procedure. First of all just to say a word about the fact that while we do have an informal procedure before we would launch a formal proceeding we have what is called the EU pilot system, some of you may have had to deal with this, where we may receive a complaint or we have a horizontal action, and we first of all try to clarify certain questions with the authorities and try to resolve the matter informally without opening an infringement procedure. Quite often the story finishes there, we don't have to launch an infringement proceeding. We have currently about 20 EU pilots concerning Ireland.

So the formal procedure: you have a letter of formal notice with a two months deadline to reply. There we would often meet or speak with the authorities to

try to resolve the matter to try to see how it can be resolved. If we still have a problem we issue a reasoned opinion, with a more formal analysis of the legal situation and we again have a two months deadline, again there would be an opportunity to have technical meetings to try to resolve the situation. If that fails we then would make an application to the Court of Justice the Commission would bring Ireland to the Court, for the court to say "Ireland hasn't complied with EU law" and the court will decide, Yes or No, whether Ireland has complied or not.

Just briefly, Article 260, when you have a judgement of the court we also have an informal step there where we have what we call a pre-260 letter where we would ask Ireland to tell us "How are you implementing the judgement?" If we see nothing happening we send a letter of formal notice and there you have a two month deadline to reply but you go straight to the next phase of an application to the court, there is no reasoned opinion phase so it's a shorter procedure. In the end - if the court decides that there is a failure to comply with the judgement there is a second judgement where there is a penalty - there are daily penalties imposed and/or a lump sum for the infringement.

So turning to Ireland's implementation of EU environmental law I want to show you some statistics. Here you have the environmental cases per member state you'll see we have a total, on the 21st of June, of 338 cases which is a lot, it's one of the biggest areas of infringement. It means that implementation is all the more important.

In terms of Ireland, you'll see there - Ireland had 14 open infringements. That's gone down to 12 as of last week where we closed 1 case and we closed an old complaint which was registered before this EU pilot system came into place. Then if we look at, again all member states, all our cases by sector you'll see we have 3 big sectors: waste, nature and water.

If we look at Ireland, you'll see that we do indeed, like for many other member states, we have a high number of nature and water cases. Indeed this is as Laura Burke said at the beginning those two areas are really serious challenges and reflects itself in the fact that we have more infringements in those areas.

We also have, peculiar to Ireland, if you look back at the general picture, impact assessment doesn't figure in the higher number of cases, whereas for Ireland, we have a lot of impact assessment cases and then for Ireland a little different is we have a small number of waste infringements.

Just a few comments on the current situation: Mícheál earlier said: "Ireland doesn't have a good history". That's what I was going to say, the historical context isn't good. The legislation is horribly complex; it's very, very difficult to understand. This is of course a significant barrier to proper implementation and to ensuring the law is actually applied.

I think in the Irish context, the complexity of the legislation makes guidance all the more important. This is something that we in DG Environment have insisted on in certain cases, that good guidance makes things clear, not only

to the public, but also to local authorities who play such an important role in implementation.

We have a problem in terms of the fact that we don't have proper implementation of judgements of the Court of Justice. Of the 12 infringements that are open 8 of those infringements (a very high number) are cases where we have a judgement of the Court of Justice already saying there is an infringement. We're working hard with the authorities here to try to resolve those cases. That really is a priority; it's a problem that needs to be addressed.

I have heard in the time I've been in this job many, many complaints and comments about difficulties in access to justice and access to information. In terms of access to information I've seen a lot more examples, recently, of people successfully obtaining information rather than the opposite. We're still looking at the area of access to information in more detail; but in terms of access to justice, the Commission has launched an infringement proceeding against Ireland, has sent a letter of formal notice, that's going to be an ongoing discussion to try to resolve some of the issues that we see as important to resolve.

Then another key factor for us in terms of Ireland is that we get a high number of complaints, we have something between 60 and 70 open complaints. The number continues to rise every day and this is a significant difficulty.

What are the challenges for the future? The report that we have been discussing for the day sees implementation as one of the 4 big challenges and that's a good thing. There needs to be better application of environmental legislation better enforcement, improved access to justice, better public information, full implementation of outstanding Court of Justice judgements.

How can this be done, what sort of paths can be followed? I've just put here a few examples of how I see things very much in a positive way, positive things that have been done which show the way forward in the Commission's perspective.

First of all, I wanted to mention this so-called "programme of measures" which has been adopted in the waste case which is still open. It's a long standing case where there were a lot of grounds, a lot of issues, a lot of progress has been made but there are still steps that have to be taken over the next while to fully implement the judgement. In this case the Dept of the Environment has prepared this document which describes all the things that need to be done. Everything is there, who you need to contact if you have a question it's a very open, transparent document. I think that's a very positive development and something which is quite innovative at a European scale in a case like this.

So that would be a good practice that we would like to see in appropriate other cases here, but also with respect to other member states. I understand that work is going on on a co-ordinated complaints system I think the complaints about environment (and problems) have to be dealt with in Ireland: at local level, at national level. It doesn't work, it's not going to work in the

future with a continuing high number of complaints coming to the European Commission.

Then, in terms of tools for enforcement, I wanted to mention, it's very much geographical information, as Jock already said, I think it's crucial to improving implementation. I saw yesterday the new website "myplan.ie" which I was very impressed with the start of it contains a lot of planning information but it already contains nature information, national monuments and I understand that it's going to be developed further and can help also in terms of being a compliance tool. That's a very positive development as well. And something which I think other member states should look at.

I also wanted to mention the septic tanks case - because we've been working on - even though that case is back in the Court of Justice we have been working together with the authorities trying to see how the issue can be resolved. I understand that the risk based inspection system being developed there is using very sophisticated geographic information and data sites and that really would provide a good basis for the inspection system.

As I said at the beginning in terms of our priorities information, public information tools, active dissemination is something which really needs to be improved. And I think there has been progress in this regard but more can be made and again, I understand that there may be some developments in terms of providing (for example) a more targeted information leaflet on environmental complaints, not just areas which are covered by the EPA's responsibility.

Of course the Commission welcomes Ireland's accession to the Aarhus convention, we hope that this can be built on Just to conclude: the implementation of environmental law in Ireland is Ireland's responsibility, not the Commission's, and it's Ireland's challenge. I hope to see further good progress in the future.

Thank you.