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Recent lessons from caselaw on EIA

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Learning from EIA related litigation: Introduction

EIA:

1. Is an iterative process of assessment of likely *significant* effects of a project on the environment
2. Must be a project within Annex I or II of the Directive
3. Can have preliminary examination, screening and full EIA stages
4. Assessment must be carried out prior to development consent being granted
5. (Full EIA) Required if there is a likelihood of significant effects
6. Process is informed by the EIAR (and adequacy is a matter for the decision-maker)
7. Small projects can have significant effects
8. Project splitting to evade the purpose of the Directive is prohibited
9. Key purpose is early and effective public participation when all options remain open

Learning from EIA related litigation: Agenda

1. Scope of “project”

- Cummins / Moss
- Carvill
- McGowan / Doyle

2. Potential and unmitigated effects

- Oxigen

3. Public notices

- North Westmeath Turbine AG

4. Adequacy of EIA Screening

- Concerned Residents of Coolkill

5. Design flexibility and EIA

- Hoctor

6. EIA and the interaction with other regulatory codes

- Associated Petroleum Terminals Ltd

7. Climate assessment

- Friends of Killymooney Lough
- Boswell

Scope of “project” – access tracks to solar farms

Cummins & Ors v ACP [2025] IEHC 521

- Challenge to permission for a 141 hectare solar farm, Carrick-on-Suir
- Whether the access tracks constituted “roads” under the EIA Directive

Held:

- internal, rudimentary access tracks used within solar (and other) projects do not constitute “roads”

Moss v ACP [2026] IEHC 62

- Challenge to permission for a 104 hectare solar farm, Thomastown, Kilkenny
- Whether the access tracks constituted “roads” under the EIA Directive
- Whether ACP entitled to change its mind as to whether EIAR required

Held:

- If internal tracks ancillary to non-EIA developments reclassified as “private roads” then would wrongly subject many developments to EIA
- S. 132 not a “procedural straightjacket” and does not preclude ACP changing its mind



Scope of “project” – temporary cycle route

Carvill & Anor -v- Dublin City Council & Ors [2025] IECA 84

- DCC decision to implement six-month cycle route trial in Sandymount quashed after High Court held Scheme was not temporary and EIA screening flawed
- DCC appealed, arguing the Scheme was temporary, did not require EIA or AA, and was authorised under the Roads Act 1993

Held:

- Scheme did not constitute “urban development” or “road development” for the purposes of the EIA directive, therefore EIA screening not required
- No obligation to screen the Scheme for EIA as a sub-threshold development arose if it did not fall within project described in the EIA Directive



Scope of “project” – telecoms masts

***McGowan v ACP & Ors* [2025] IEHC 727**

- Challenge to the ACP’s decision to grant permission to a telecommunications structure with all associated works in Kinlough, Co. Leitrim.
- Whether a project constitutes “urban development” under Class 10 Annex II

Held:

- EIA Directive itself envisages flexibility, leaving a wide zone of evaluation
- Even if a category exclusion inappropriate, a single telecommunications mast in a rural field was obviously not urban development.

***Shamsa Doyle -v- ACP* [2025] IEHC 725**

- Challenge to the ACP’s decision to grant permission for a 21m telecommunications structure at Laytown Railway Station, Co. Meath.
- Similar finding to McGowan



Potential and unmitigated effects

Oxigen Environmental Unlimited Company v ACP [2025] IEHC 632

- Challenge to the Commission's decision to refuse planning permission for a large waste recovery and recycling facility at an unserviced rural site, 70m from the nearest dwelling.
- The Court rejected the applicant's argument that the Commission acted unlawfully by relying on "potential" impacts and by assessing impacts prior to mitigation.

Held:

- EIA expressly requires consideration of potential effects, not just impacts that are certain or proven.
- EIA Directive requires decision-makers to consider unmitigated impacts as a distinct issue from the assessment of mitigation.



Public notices

North Westmeath Turbine Action Group & Ors -v- ACP [2025] IEHC 367

- Challenge to ACP's decision to grant planning permission for a 13-turbine wind farm and associated works, excluding grid connection, in Westmeath
- Grid connection work to span 26 kilometres over 21 townlands

Held:

- Public notices failed to reference the grid connection or its location, thereby failing the requirement of the EIA Directive to give public notice of the EIA
- Despite not being included in the planning permission application, the grid connection was an integral part of the development
- EIA is required to comply in all respects with the EIA Directive, including the public notification step in that process
- ACP currently seeking a certificate on this point



Adequacy of EIA Screening

Concerned Resident of Coolkill v ACP [2025] IEHC 265

- Challenge to the Commission's decision to grant SHD permission for 116 apartments on Sandyford Road, Dublin 18
- Alleged unlawful EIA screening due to failure to assess impacts of rock-breaking
- No site investigations and developer's documents adopted a best case scenario approach to the make up of the ground conditions despite GSI Data

Held:

- Commission had before it information as to site geology and from GSI mapping system and this had been "priced in" to the analysis
- In a relatively unremarkable development, the Commission's screening decision was not shown to be defective



Design flexibility and EIA

Hector v ACP [2026] IEHC 65

- Challenge to ACP's decision to grant planning permission for a wind farm development in Co. Tipperary with grid connection to Co. Offaly
- Full EIA
- Alleged inadequate EIA due to flexibility in turbine dimensions

Held:

- Ground of challenge rejected due to applicant's failure to discharge evidential burden to show that EIA was defective (no expert evidence relied upon)
- In the absence of expert evidence, an applicant would have to demonstrate a material flaw on the face of the material or that there were other autonomous obligations on the decision-maker which were not complied with
- Design flexibility continues to be a contentious issue



EIA and the interaction with other regulatory codes

Associated Petroleum Terminals Ltd v Secretary of State [2025] EWHC 1992

- Judicial review of Secretary of State's decision to grant development consent for new ferry terminal at the Port of Immingham
- Full EIA
- Applicants alleged EIA inadequate due to failure to assess safety impacts of largest proposed vessels.

Held:

- It is lawful to rely on the existence of another regulatory regime in assessing likely significant effects
- Distinction between leaving over environmental assessment to a future-decision maker and relying on that framework to conclude no likely significant effects at the time of the decision



Climate assessment

Friends of Killymooney Lough –v– ACP & Ors [2025] IEHC 407

- Challenge to the Commission’s decision to grant permission for a Tesco retail development with petrol station and drive-thru café in Cavan Town.
- Full EIA

Held:

- ACP’s judgement that traffic-related emissions were not “significant” (Increase of CO₂ emissions by <0.001% of Ireland’s 2030 CO₂ emissions targets) was within its evaluative margin and rationally explained.
 - emissions-causing projects may be regarded as having insignificant effects even where the overall national objective is to reduce emissions

Key takeaway

- EIA Directive does not require vehicle emissions from *all* projects nationwide to be assessed, this would be “impossibly onerous”.



Climate assessment

R. (Boswell) v Sec of State for Energy Security and Net Zero [2025] EWCA Civ 669

- Appeal against Secretary of State’s decision to grant development consent for gas-fired electricity generation station with Carbon Capture Utilisation and Storage. Project comprised 860MW gas-fired station with post-combustion carbon capture, CO2 pipeline network, and offshore export infrastructure
- Full EIA

Held:

- The evaluation of the significance of an estimated amount of GHG emissions and its acceptability is a matter of fact and judgement for the decision-maker.
- No legal principle exists requiring a public authority to “contextualise” GHG emissions or compare them with a benchmark.
- Whether emissions are “significant” or whether environmental information is sufficient for the purposes of EIA legislation, is a matter of judgement for the decision-maker.



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