

PHILIP LEE

PERMITTING ENERGY PROJECTS ENGINEERS IRELAND CPD SEMINAR

Presented by Alice Whittaker

2 0 O c t o b e r 2 0 1 4

Energy Policy Drivers

1. **Security of energy supply** – self-sufficiency, reliability
2. **Competitiveness** – price, efficiency, choice and affordability
3. **Environmental responsibility** – reduction of harmful emissions, minimising the negative effects of energy sourcing and use
4. **Creation of jobs and enterprise development** – new business models, new products and services, new skills

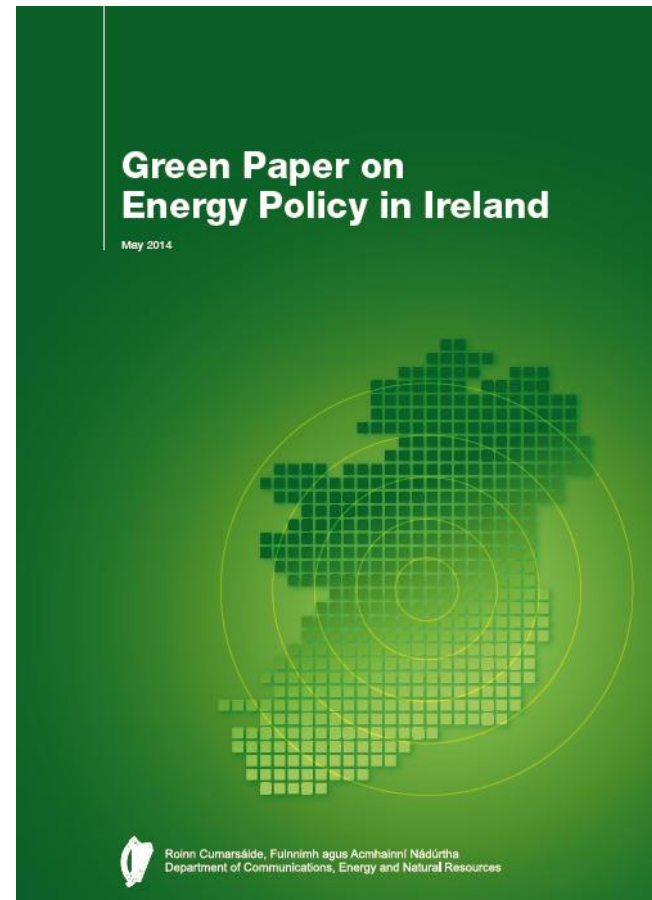
Energy Permitting - Key Question

What additional improvements could be made to the permitting and licensing processes for energy infrastructure projects to make them clearer and more efficient for project developers, the public, and other stakeholders?

Page 43, Priority 3

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Some Issues

1. Lack of Planning Policy
2. Legislative maze – Errors, lack of clarity – *Providence Resources*
3. Development Plan- Variations
4. Ancillary / Subsidiary elements to projects – grid issues – *Commission v Ireland (Derrybrien)*; Commission Interpretation note
5. NPWS / lack of resources, lack of baseline data, legal uncertainty
6. Post-consent design changes – *Bailey v Kilvinane Wind Farm*
7. Distinction between good design and mitigation - *Kilross and Rossmore v Eirgrid*
8. Lack of methodology for assessing health impacts
9. Multiplicity of consents, consenting bodies and challenges - EPA, ABP, CER, DCENR, DECLG – Shell
10. Judicial review, standing and costs – *SAMRA v ABP*

STRATEGIC PLANNING

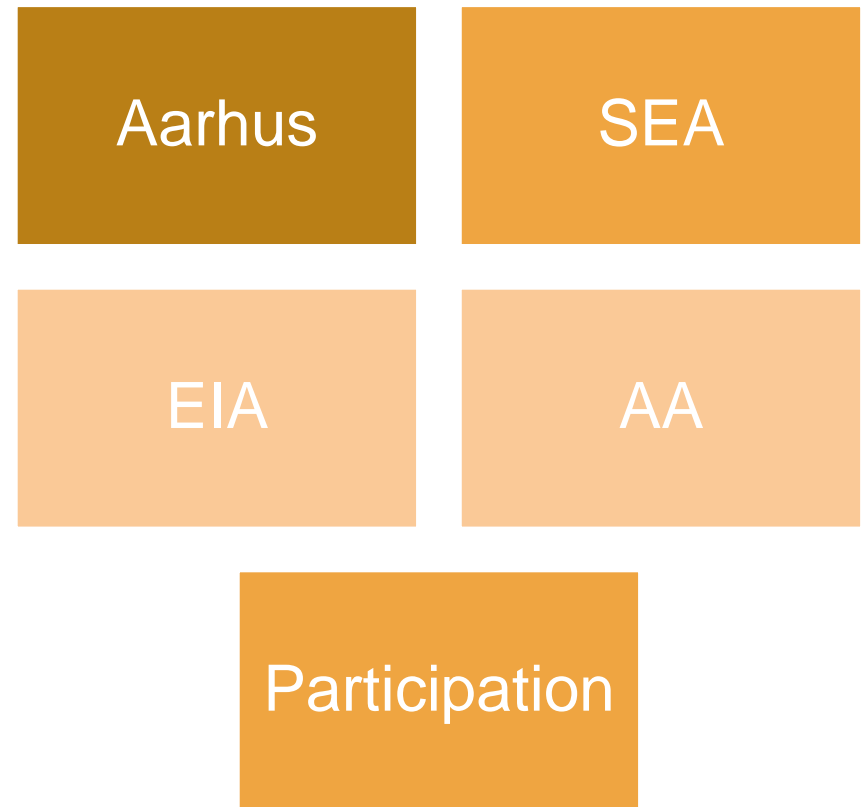
*Integration and Co-ordination of
Assessments*

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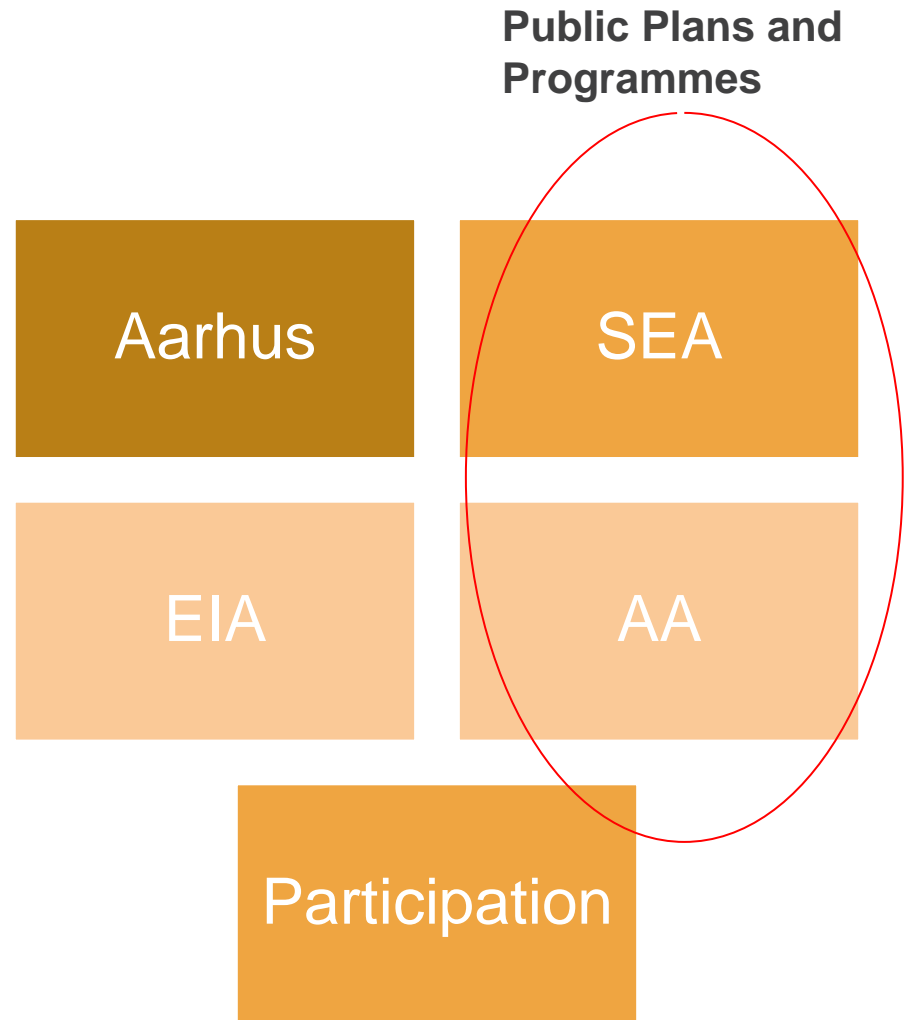
Strategic Planning Approach

- Grid 25 / Government Policy Statement on the Strategic Importance of Transmission and other Energy Infrastructure
- NEEAP / NREAP / OREDP
- Development Plans / LARES
- Reviews of Oil and Gas supply, storage and security
- Atlantic Licensing Rounds
- Draft Bioenergy Plan
- UGEE Research project



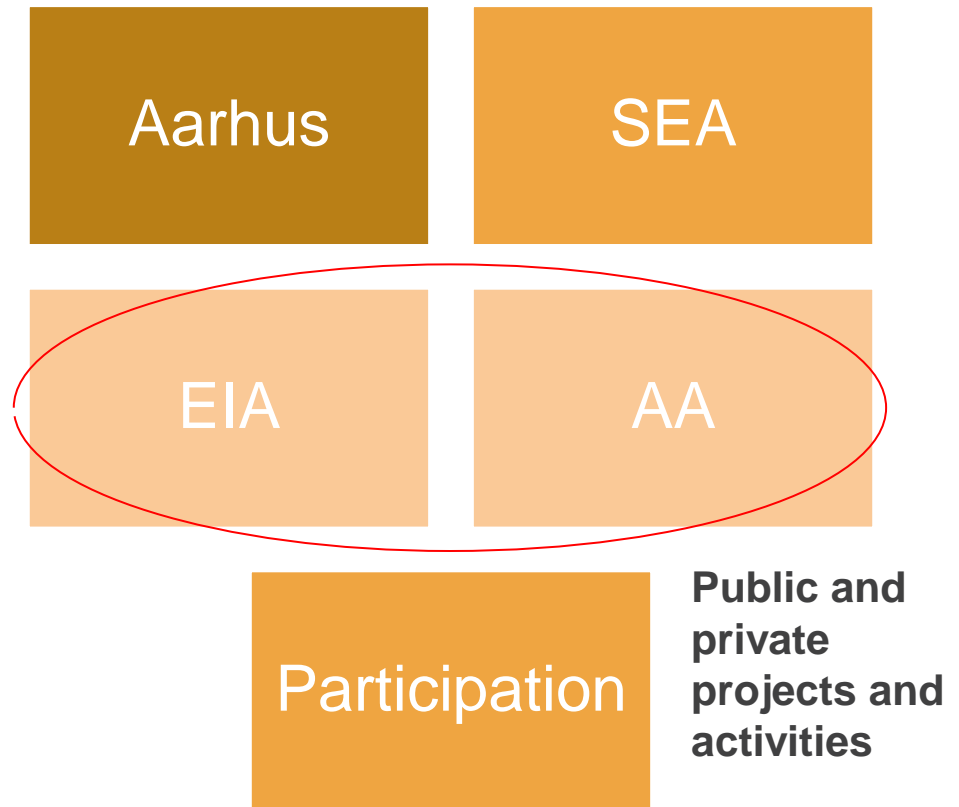
Strategic Planning Approach

- National Energy Efficiency Action Plan
- National Renewable Energy Action Plan
- Offshore Renewable Energy Development Plan
- Grid 25
- Government Policy Statement on the Strategic Importance of Transmission and other Energy Infrastructure
- Review of the Security of Ireland's Access to Commercial Oil Supplies
- Study on Common Approach to Natural Gas Storage and LNG on an All-Island Basis



Strategic Planning Approach

- National Energy Efficiency Action Plan
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AARHUS CONVENTION, SEA AND EIA

Summary

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Aarhus Convention

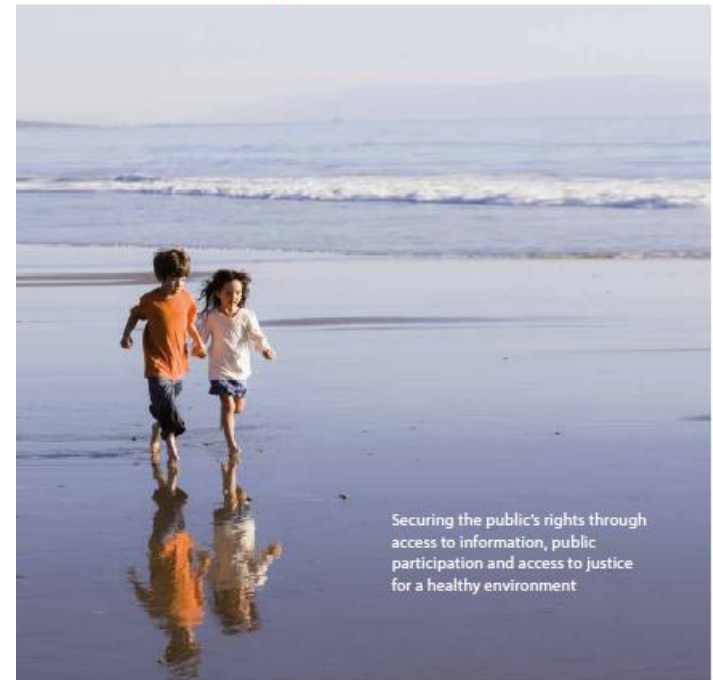
1. Access to Information
 2. Public Participation
 3. Access to Justice
- Policies, Legislation
 - Plans and Programmes
 - Projects and Activities

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UNITED NATIONS ECONOMIC COMMISSION FOR EUROPE

The Aarhus Convention An Implementation Guide



Strategic Environmental Assessment (SEA)

- Public Plans and Programmes - Energy
- Public Participation
- Evidence based
- Assess and Report
- Take account in decision- making
- Monitor and Remedy
- Right of Review

Official Journal

of the European Communities

English edition

Legislation

Contents

I Acts whose publication is obligatory

Commission Regulation (EC) No 1495/2001 of 20 July 2001 establishing the standard import values for determining the entry price of certain fruit and vegetables

***Commission Regulation (EC) No 1496/2001 of 20 July 2001 amending Regulation (EC) No 1209/2001 and derogating from Regulation (EC) No 562/2000 laying down detailed rules for the application of Council Regulation (EC) No 1254/1999 as regards the buying-in of beef**

***Commission Regulation (EC) No 1497/2001 of 20 July 2001 imposing provisional anti-dumping duties on imports of urea originating in Belarus, Bulgaria, Croatia, Estonia, Libya, Lithuania, Romania and the Ukraine, accepting an undertaking offered by the exporting producer in Bulgaria and terminating the proceeding as regards imports of urea originating from Egypt and Poland**

Commission Regulation (EC) No 1498/2001 of 20 July 2001 determining the percentage of quantities which may be allowed in respect of import licence applications lodged in July 2001 under tariff quotas for beef and veal provided for in Regulation (EC) No 1279/98 for the Republic of Poland, the Republic of Hungary, the Czech Republic, Slovakia, Bulgaria and Romania

***Directive 2001/42/EC of the European Parliament and of the Council of 27 June 2001 on the assessment of the effects of certain plans and programmes on the environment**

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Permitting Energy Projects – Engineers Ireland

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SEA Report

1. Non-technical summary
2. Objectives of Plan/Programme
3. Do nothing scenario
4. Characteristics of environment likely to be significantly affected
5. Existing issues, particularly in relation to Natura 2000 sites
6. Relevant environmental protection objectives, and how they have been taken into account
7. Likely significant effects on:
 - Biodiversity, flora and fauna
 - Population and Human Health
 - Soil, water, air, climate
 - Landscape, material assets, cultural heritage
 - Interaction between these factors
8. Main alternatives considered
9. Technical difficulties
10. Prevention / mitigation
11. Monitoring / Remedial Action

Environmental Impact Assessment (EIA)

- Public and Private Projects - Energy
- Public Participation
- Evidence-based
- Assessment of likely significant effects
- Take account in decision-making
- Right of Review

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Legislation

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28 January 2012

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I Legislative acts

DIRECTIVES

- ★ Directive 2011/92/EU of the European Parliament and of the Council of 13 December 2011 on the assessment of the effects of certain public and private projects on the environment (*) 1

II Non-legislative acts

INTERNATIONAL AGREEMENTS

- ★ Information on the date of entry into force of the Protocol setting out the fishing opportunities and financial contribution provided for in the Partnership Agreement in the fisheries sector between the European Community and the Republic of Cape Verde 22

EIA Report / EIS

1. Non-technical summary
2. Description of site, design, size
3. Data required to identify, describe and assess main effects on the environment
4. Mitigation measures to avoid, reduce, remedy significant adverse effects
5. Main alternatives considered, reasons for choice, taking environmental effects into account
7. Likely direct / indirect significant effects on:
 - Human beings, flora and fauna
 - Soil, water, air, climate and landscape
 - Material assets, cultural heritage
8. Cumulative Impacts and Interactions
9. Transboundary Effects

Annex IV – Information required

'Whole Project' Approach

1. **Ancillary / Subsidiary Elements** – Derrybrien;
2. **Cumulative Impacts and Interactions** – Commission Interpretation Note / Guidance – lack of clarity
3. **Grid connection** – uncertainty

NEW EIA DIRECTIVE 2014 / 52 / EU

Amending EIA Directive 2011/92/EU

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New Directive

- No new projects
- Definition of 'EIA'
- Quality of EIA/EIA Report
- Mitigation
- Monitor and Remedy
- Penalties

What do we
do before
16 May 2017?

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25 April 2014

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I Legislative acts

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DIRECTIVES

* Directive 2014/52/EU of the European Parliament and of the Council of 16 April 2014 amending Directive 2011/92/EU on the assessment of the effects of certain public and private projects on the environment (1) 1

II Non-legislative acts

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New EIA Directive 2014/52/EU

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‘EIA’

New Definition

- Preparation of EIA Report by developer
- Consultations, supplemental information
- Examination by C.A.
- ‘Reasoned conclusion’ on significant effects
- Consent decision (see Art. 8a)

EIA *report*

Identify, describe, assess

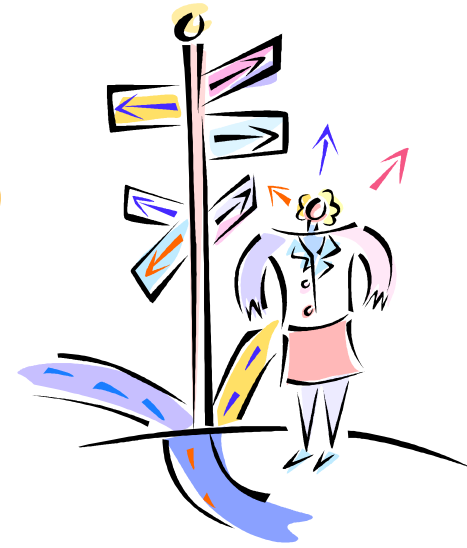
Interaction

Direct *and indirect* effects on:

- Population and Human Health
- Land, Soil, Water, Air and Climate
- Material Assets, Cultural Heritage and the Landscape
- Biodiversity

Alternatives

Reasonable, relevant



- Studied by the developer
- **Relevant** to project specific characteristics
- Baseline (do nothing) scenario
- Main reasons for the option chosen, taking into account the effects on the environment

Decision



Written, reasoned decision

- Reasoned conclusion on significant effects (ensure it is up-to-date)
- Environmental conditions, features of the project and/or measures to ‘avoid, prevent or reduce and, if possible, offset significant adverse effects’ and **monitoring measures**
- **Refusal** – state main reasons for refusal

Monitoring



‘Post-Project Analysis’

- MS to ensure developer implements mitigation
- Procedures for monitoring significant adverse effects
- Monitoring parameters proportionate to nature, location and size of project, and significance of environmental effects

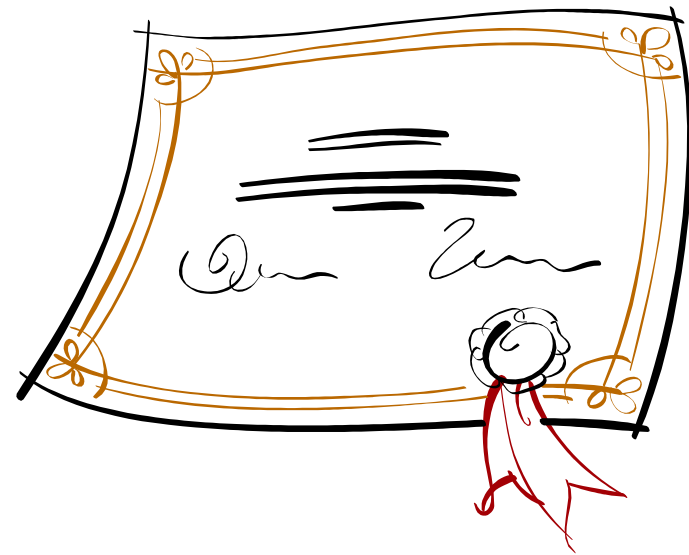
Compensation

Recital 35

‘MS should ensure that mitigation and compensation measures are implemented, and that appropriate procedures are determined regarding the monitoring of significant adverse effects on the environment resulting from the construction and operation of a project, inter alia, to identify unforeseen significant adverse effects, in order to be able to undertake appropriate remedial action.’

Quality

Competent experts



- Developer – Must use *competent experts*
- C.A. – Must have / have access to *sufficient expertise ‘in the relevant field of the project concerned’*

Penalties

Legislation

- Infringements of national EIA legislation
- MS discretion regarding form of penalties
- Must be '*effective, proportionate and dissuasive*'
- Applies to all Annex I and Annex II projects



Time frame

2 years, 7 months...

- Legislation and Guidance required:
 - Streamlined / Co-ordinated procedures
 - Consent decision
 - Post-project analysis
 - [Compensation?]
 - Penalties



HABITATS AND BIRDS DIRECTIVES

Appropriate Assessment
- With Aebhin Cawley

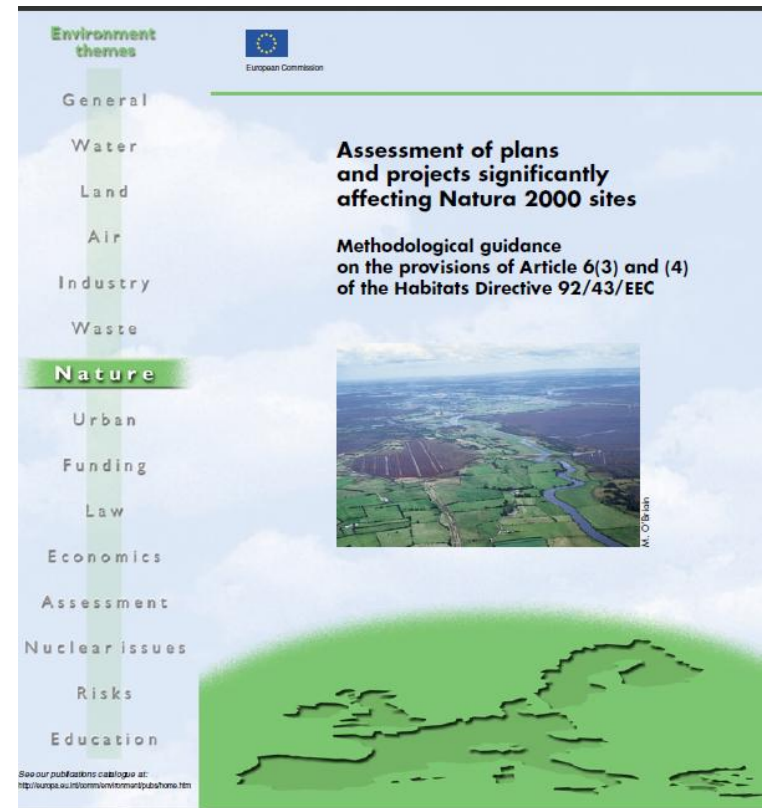
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Appropriate Assessment

Articles 6 (3) and (4)

- All plans and programmes
- Public and Private
- Screening
- Assessment
- Conclusions
- Limited IROPI exceptions



Kelly v An Bord Pleanala (25 July 2014)

1. Permission for 35 Wind Turbines quashed – AA not lawful – failure to give adequate reasons – remitted back to the Board to do AA. The AA must:
 - Identify, in light of best scientific knowledge in the field, all aspects of the development, which can by itself or in combination with other plans or projects, affect the European Site – **Examination and Analysis**
 - Contain complete, precise and definitive findings and conclusions – no lacunae or gaps - **Analysis, evaluation and decisions**
 - Decision that development will not adversely affect the integrity of a European Site, only where no reasonable scientific doubt remains as to the absence of identified potential effects – **Complete, precise and definitive finding and conclusion**

Rossmore and Killross v ABP, State and Eirgrid

- Eirgrid's AA screening based on best practice construction methods
- Objector argued that ABP erred in taking this into account – mitigation.
- High Court - *'where the mitigating factor in question is an intrinsic part of the work to be carried out it makes no sense that [the Board should not take it into account]'*.
- Court referred to Harte DC v Secretary of State for Communities and Local Govt – *'If certain features (to use a neutral term) have been incorporated into that project, there is no sensible reason why those features should be ignored at the initial, screening, stage merely because they have been incorporated into the project in order to avoid, or mitigate, any likely effect on the SPA'*

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Thank you for listening

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