

Nature Conservation in Europe: Approaches and Lessons

Annex IE.1. Examples of Problems Relating to Agriculture and Forestry Impact Assessments and Permitting and Nature Conservation in Ireland

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Over the years certain ‘politically-sensitive’ land uses have been taken outside the planning permission regime altogether, such as many agricultural land uses, afforestation, and — most recently — large-scale peat extraction, which ultimately fell back within the planning permission system when the legislation exempting large-scale extraction from planning permission was struck down by the High Court in 2019 (as described in NCE Chapter 19, Jackson and Murray, 2023). In such cases, dedicated consent regimes have been created that have tended to provide less-effective opportunities for public participation. For example, it took Ireland being fined €1.5 million by the CJEU in 2012 before a permitting/EIA procedure was introduced for certain on-farm changes such as hedgerow removal and wetland ‘reclamation’.¹ The consent regime introduced for these on-farm changes, operated by the Department of Agriculture, Food and the Marine (DAFM), is relatively opaque when it comes to public participation and has resulted in very few EIAs being carried out in practice. The authors are aware of only two applications for consent between 2011 and 2019 in respect of which an Environmental Impact Statement was submitted (DAFM, 2020).²

In the case of afforestation, according to DAFM (2022) ‘in the last 10 years no individual forestry application greater than 50 ha [the mandatory EIA threshold] has been established’. So no mandatory EIAs have been triggered, and the Forest Service has routinely ‘screened out’ sub-threshold EIAs: a recent investigative report revealed that only three EIAs of afforestation applications had been carried out since 2010 (i.e. sub-threshold and ‘screened in’, not above the mandatory EIA size threshold), despite the approval of thousands of applications for the planting of tens of thousands of hectares (Sargent, 2020). The public in Ireland has thus historically had no opportunity to comment on the environmental impacts of the vast majority of proposed afforestation in the country in light of evidence of those impacts. This is despite the fact that there has been large-scale afforestation on peat soils in Ireland, including in recent years,³ that may result in the forest in question being a source of carbon emissions over its lifetime rather than a sink, for example. In view of an increasing number of appeals, legal challenges, and delays in the forestry consent process, the process was overhauled by the government in late 2020.⁴ While the revised process provides in one sense for improved transparency in that an online public viewer for applications is now available,⁵ the revised process was criticised by NGOs, who argued that the introduction of fees for the making of observations (€20) and appeals (€200) impinges on public participation.

Revised procedures adopted in recent years appear to have led to an increased number of appropriate assessments under the Habitats Directive, though this predates the major regulatory overhaul of the forestry consent process in late 2020. A review commissioned by DAFM refers to the

¹ The judgment at first instance was C-66/06 and the related proceedings for fines was C-279/11.

² If the Minister ‘screens in’ an application and therefore requires an EIS or NIS to be submitted alongside the application for consent, under Reg 12 of SI 456 of 2011 the Minister must issue a public notice of the application. Before the relevant webpage was archived, there were only two such public notices on the Department of Agriculture’s register of EIA screening application decisions - one from 2011 and one from 2018 (DAFM, 2020). The Department maintains a link to the archived register here <https://www.gov.ie/en/service/161a7-environmental-impact-assessment-screening-service/> – no screening decisions have been added to the public register since December 2019.

³ As Sargent (2020) comments, ‘In 2015 alone, according to data released under AIE [access to information on the environment rules], almost 5 300 ha were approved for planting on peat soils without a single EIA being carried out.’

⁴ See the Forestry (Miscellaneous Provisions) Act 2020.

⁵ <https://forestry-maps.apps.rhos.agriculture.gov.ie/> - for applications received since 11 January 2021. This service has been criticised as ‘significantly inferior to other Government map-based products in terms of its scope and functionality’: see Irish River Project (2022).

fact that the application of a new standard operating procedure from late 2019 in response to CJEU rulings ‘resulted in an immediate increase in the number of applications which required AA [appropriate assessment] by a qualified ecologist, which slowed the processing of licence applications as the demand for ecological expertise to carry out AA outstripped the immediately available ecological resources’ (Philip Lee, 2022). Indeed, these delays were one trigger for the regulatory reforms that followed in late 2020.

The situation in respect of EIA is less clear: while a perusal of the register of afforestation licence decisions would suggest that EIA continues to be screened out for the vast majority of applications, the published decisions of the Forestry Appeals Committee indicate that forestry licence decisions are regularly being appealed on the basis of non-compliance with the Habitats and EIA Directives (DAFM, 2023), and have been overturned on the basis of both (FAC, 2023). Over time, this may have an effect on EIA and appropriate assessment screening decisions upstream, and may result in more afforestation licence applications being ‘screened in’ to the assessment process.

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