

EU Policy Review

Analysis of recent EU legislation and policy for local and regional government

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For further information on these issues, or if you would like to receive copies of any of the documents mentioned, please contact Mark Callanan at the IPA [01] 240 3632 or email mcallanan@ipa.ie

LEGISLATION

New Marine Directive and Marine Strategy Launched

A new Directive aimed at protecting and restoring Europe's oceans and seas was proposed by the European Commission in October. The Directive forms part of the latest 'Thematic Strategy' unveiled by the Commission, which proposes a package of initiatives on particular environmental challenges facing the EU.

The proposed Directive would require every EU country to conduct an environmental analysis, and assess the impact of tourism, fishing and other activities on its waters. It would also oblige national governments to create a strategy to protect affected waters. The overall objective is to achieve good environmental status of Europe's marine environment by 2021. The strategy must set out an initial assessment of the status of marine water in the area covered, and establish a set of environmental targets. A programme of measures designed to achieve good environmental status must also be included. These can include input controls to limit damage to the marine

environment, economic incentives to achieve ecological objectives, mitigation and remediation measures for when damage occurs, and measures to raise public awareness on the marine environment. Neighbouring national governments will have to cooperate as appropriate.

Under the draft legislation, three maritime regions have been created on the basis of geographical and environmental criteria – the North East Atlantic, the Baltic Sea, and the Mediterranean. Potential sub-regions will also be identified, one of the sub-regions for the North East Atlantic would be the 'Celtic Seas', including the marine waters of Ireland and Britain. A Strategy must be prepared for each of these regions and/or sub-regions. However no specific management measures will be set down at EU level. As part of the drive for better regulation, there will be a strong emphasis on the use of impact assessments and cost benefit analyses when national governments are developing programmes for improving their marine environment.

In formulating the Directive, the Commission considered three options:

- A no-action scenario;
- A voluntary approach whereby the Commission would issue a communication setting out non-binding recommendations;
- The use of a flexible legal instrument such as a Marine Strategy Directive which was not overly prescriptive in its tools.

In order to reach a decision on which option to choose, the Commission undertook an impact assessment. This involved an attempt to put a value on the worth of the EU's marine assets, including the fishing, shipping, and tourism industries, as well as the cost of environmental damage to the seas.

A no-action scenario was viewed as not being an option given the potential for worsening pollution, while simply tightening-up existing legislation would leave many problems still unaddressed. A purely national approach was also not feasible given the transboundary nature of the issue. Having also considered the social, employment, external and economic impacts, it was decided to proceed with the proposal for a Maritime Strategy Directive. The impact assessment found that the voluntary approach would not differ significantly from the no-action scenario in the medium to long term.

The approach adopted – that of proposing a Marine Strategy and a proposed Directive – is expected to cost €90 million in the first two years and €70 million per year thereafter.

The Commission argues that the new strategy will not only benefit the marine environment, but will also provide useful information for the dredging and marine industries.

It is also recognised that the new Marine Strategy will be complemented by other existing Directives, including the Urban Waste Water Treatment and Nitrates Directive, the Habitats and Birds Directive, and the Water Framework Directive. International conventions will also complement the objectives of the new strategy, including those on the Control and Management of Ships' Ballast Water and Sediments, and the Control of Harmful Anti-Fouling Systems on Ships.

The text of the Marine Strategy and the new proposed Directive can be found online at:

<http://www.europa.eu.int/comm/environment/water/marine.htm>

Revised Nitrates Programme and Draft Regulations Published

The implementation of the Nitrates Directive (91/676/EEC) in Ireland took a new turn in October with the publication of draft regulations by the Department of the Environment, Heritage and Local Government (see *EU Policy Review* 3/05 April - May 2005 for the background to the Regulations).

Following problems the European Commission had with Ireland's original proposals for implementing the Directive, and subsequent discussions with the Commission, revised provisions are to be put in place. Some of the amendments are highlighted in this article.

The draft regulations on good agricultural practice for the protection of waters are designed to strengthen water resources from agricultural pollution, with an emphasis on the management of livestock manure and other fertilisers.

The minimum manure storage requirements for farms in different counties is outlined in the draft regulations as follows:

- ❑ 16 weeks for holdings in counties Carlow, Cork, Dublin, Kildare, Kilkenny, Laois, Offaly, Tipperary (North and South), Waterford, Wexford, and Wicklow;
- ❑ 18 weeks for holdings in counties Clare, Galway, Kerry, Limerick, Longford, Louth, Mayo, Meath, Roscommon, Sligo, and Westmeath;
- ❑ 20 weeks for holdings in counties Donegal and Leitrim;
- ❑ 22 weeks for holdings in counties Cavan and Monaghan.

In the case of intensive pig and poultry units all such holdings (regardless of county) will require 26 weeks storage capacity. The draft regulations state that small pig and poultry units (such as holdings with less than 100 pigs or 2,000 poultry places) are exempted from this 26 weeks storage requirement. In these cases, the normal storage capacity requirements above would apply.

The closed periods for spreading of organic fertilisers in counties have also been amended under the draft regulations. The proposed new 'closed periods' when spreading of *organic fertiliser* is prohibited, are as follows:

- ❑ 15th October to 12th January in counties Carlow, Cork, Dublin, Kildare, Kilkenny, Laois, Offaly, Tipperary (North and South), Waterford, Wexford, and Wicklow;
- ❑ 15th October to 15th January in counties Clare, Galway, Kerry, Limerick, Longford, Louth, Mayo, Meath, Roscommon, Sligo, and Westmeath;
- ❑ 15th October to 31st January in counties Cavan, Donegal, Leitrim and Monaghan.

Separate proposed closed periods for application of chemical fertilisers and farmyard manure are also included.

The regulations outline a number of buffer zones near water bodies where fertiliser may not be applied. Organic fertiliser or soiled water may not be applied to land within:

1. 250 metres of a surface watercourse, borehole, spring or well used for abstracting drinking water, supplying 10m³ or more of water per day, or serving 50 people or more;
2. 50 metres, or any other distance as specified by the local authority in the area, of a borehole, spring or well used for abstracting drinking water;
3. 20 metres of a lake;
4. 15 metres of exposed cavernous or karstified limestone features;
5. 5 metres of a river, stream, or other surface watercourse (other than those above).

As an exception to point 5, the specified distance of 5 metres may be reduced to 3 metres where the watercourse is an open drain or the adjoining area of land is a narrow parcel not exceeding one hectare and not more than 50 metres in width. However, a buffer zone of 10 metres will apply where the land has an average incline of more than 10% towards the surface watercourse.

In addition, chemical fertiliser may not be applied to land within 1.5 metres of a surface water body.

The draft regulations also contain amendments to the maximum amount of soiled water that can be applied to land at any one time, with a minimum number of days between applications. The use of certain methods to apply organic fertilisers or soiled water (such as the use of 'umbilical chord' equipment using an upward-facing splashplate or a sludge irrigator / 'rain gun') is prohibited.

The Department of Agriculture and Food is responsible for inspecting farm holdings to determine compliance and assess the effectiveness of measures under the regulations, as well as providing the results of the inspections to the EPA and local authorities. It is also responsible for inspections of farm holdings under the Single Farm Payment scheme. Local authorities are also required to monitor water quality and inspect farm holdings, although the regulations state that they should aim to coordinate inspections with those carried out by other public bodies. A register of all holdings kept by the Department of Agriculture and Food can be made available to the EPA and local authorities. The EPA must also make a report every four years on the activities undertaken under the Nitrates Directive, and results of monitoring programmes.

POLICY INITIATIVES AND ANNOUNCEMENTS

EU Plan for Digital Libraries Unveiled

The European Commission has invited comments on new plans to make Europe's written and visual heritage available on the Internet through the medium of digital libraries. The huge project, which is part of the *i2010 – A European Information Society for Growth and Jobs*, will involve the conversion to digital format of almost 2.5 billion books and journals, as well as photographs, audiovisual material, music and archival material. The idea is to facilitate greater access for all citizens to the information and material in Europe's libraries and archives. The strategy comes partly in response to proposals by Google to introduce a digital library, and builds on successes within the EU of internet-based library resources such as the French Gallica website.

There will be three main strands to the initiative. The first will consist of ensuring online accessibility of information for users; the second seeks to digitise analogue collections; while the third strand will focus on the preservation and storage of material to prevent them being lost to future generations.

EU funding will be provided for the programme, which will include a €36 million package for research into advanced access to cultural heritage and digital preservation. A further €60 million will be invested in a programme known as eContentplus, which will be geared towards making national digital collections and services interoperable and facilitating multilingual use of material. Achievement of the project will involve public/private partnerships and private sector investment.

A final recommendation on the digitisation project will be presented in June 2008, and will be based on an extensive consultation process; a review of EU copyright rules; and the implementation of EU research and development programmes on access to cultural heritage and digital preservation. The latter also involves a network of Centres of Competence in the fields of digitisation and preservation. It is envisaged that quantitative indicators will be used to measure progress.

Replies and comments to the consultation are invited before **20th January 2006**. For further details, and to contribute to the online consultation in respect of the new strategy, visit:

http://europa.eu.int/information_society/activities/digital_libraries/index_en.htm

National Consultation Over Next EU Social Inclusion Programme Continues

Ireland must prepare a new National Action Plan against Poverty and Social Exclusion in 2006, as part of the EU's social inclusion coordination process to make a decisive

impact on poverty by 2010. The current plan (known as 'NAPS/incl') contains commitments in fields varying from:

- The supply of social housing;
- Healthcare;
- Education;
- Social welfare;
- Accessible transport in urban and rural areas;
- Coordination of policies and programmes for the homeless;
- Encouraging participation and volunteering;
- Access to arts, cultural and recreational facilities; and
- Developing supports for those at risk of exclusion, such as newly arrived migrants, the disabled or Travellers.

For example, specific targets were included on new local authority housing starts, putting in place sufficient emergency accommodation available to rough sleepers, and addressing the accommodation needs of Traveller families identified in the 5-year local Traveller accommodation programmes. The role of the CDBs and the community and voluntary fora, as well as local government's expanding role in tackling poverty, are also referred to as avenues for advancing social inclusion goals at local level.

Each EU country is currently preparing a new National Action Plan against Poverty and Social Exclusion for the 2006-2008 period, which must be submitted to Brussels by September 2006.

The new text is expected to address similar topics to those covered in previous plans, although consideration is being given on whether there is a need to retain or dispose of some existing policy measures, whether some measures need to be modified to improve their impact and effectiveness, and whether new programmes might better achieve objectives. The Office for Social Inclusion within the Department of Social and Family Affairs has been coordinating the consultation process, and a number of regional consultation seminars were held around the country in November and December.

Further details on the consultation process are available at:

<http://www.socialinclusion.ie/consultation.html>

Commission Given Extra Powers over Criminal Proceedings for Environmental Offences

A ruling in the European Court of Justice has opened the way for additional powers for the Commission when EU legislation is breached. The ruling concerned EU legislation adopted in 2003 (Framework Decision 2003/80/JHA). This legislation identifies certain types of environmental offences (such as unlawful discharges into air or water, illegal waste disposal, or unlawful damage to protected species of flora and fauna) as criminal offences. However, the legislation leaves open to national governments the choice of what criminal penalties to apply. The legislation only states that conduct of this nature should be "punishable by effective, proportionate and dissuasive penalties including, at least in serious cases, penalties involving deprivation of liberty".

The Commission took the case on the basis that criminal sanctions should be enforced at EU level. A number of national governments that were parties to the case, including Ireland, argued that while criminal penalties were needed, it should be up to national governments to decide how these would be enforced. The Court in its judgement sided with the Commission.

The ruling means that the Commission will be able to instruct the relevant authorities in individual countries to seek sanctions on polluters through their national judicial system. The Commission may also be able to specify the level of penalties that should be sought.

Although the ruling applies specifically to breaches of EU environmental legislation, it may open the door to pursuing criminal sanctions for serious breaches of EU law in other areas, such as data protection or consumer protection.

European Environment Agency Reports on Environmental Indicators in EU and Ireland

The European Environment Agency's (EEA) Report on *The European Environment – State and Outlook 2005* provides an overview of the environmental situation across Europe and in individual countries. Much of the domestic publicity focussed on Ireland's supposed place 'at the bottom of the league'. However, a reading of the report reveals a rather less black and white picture. Certainly, problems that remain in Ireland are highlighted, but recent successes and progress is also acknowledged.

Much of the focus for the media in Ireland was the reporting of the results for Ireland on 9 environmental indicators on issues such as greenhouse gas emissions, energy consumption, amount of land under organic farming, freight transport demand, municipal waste volumes and use of freshwater resources.

For example, Ireland has the second highest level of emissions of greenhouse gases per capita after Luxembourg and the second highest generation of municipal waste per capita after Iceland. However, for most of the indicators, Ireland falls in the mid-range of the 'league table'. In addition, most countries were overshooting EU targets in these areas. Ireland met the targets in areas such as renewable energy, energy consumption, freight transport demand and organic farming.

The report notes positive signals in Ireland such as "long-term major reductions in serious pollution in rivers and urban air". The report also points out with regard to Ireland that "increasing awareness of the environment and willingness to act is shown by the plastic bag levy success story, increased recycling and high compliance with the new smoking-ban in bars and restaurants".

On the question of municipal waste, the report notes that the amount of waste generated continues to be a problem across Europe. The EU in 1993 had set a target of keeping household waste generation to 300kg per capita, with virtually all countries exceeding that, and the figure for Ireland in 2003 at 735kg per capita. However, the EEA sounds a cautionary note on this indicator, as the definition of municipal waste varies from country to country. The

report notes that "Irish municipal waste statistics are overstated because household waste in Ireland includes commercial waste and other waste similar to household waste" – something that went generally unreported in the domestic media. The report acknowledges that the economic boom and the increase in population are the principal driving forces behind increased waste volumes. In addition, the report notes the progress several countries are making in stopping illegal dumping, which shows up on this indicator as a higher level of waste generation – even though this action is clearly environmentally beneficial.

The report comments on the transformation of waste management policy in Ireland. The achievement of a 28% recycling rate in 2003 is seen as a positive development, and the report notes the significant progress towards the national target of 35% municipal waste recycling by 2013. The number of unlined and unregulated landfills has decreased with a small number of waste sites operating to modern EU standards, and there has been a 26% reduction in the proportion of waste going to landfill, although the report comments that there is a continuing deficit of waste management infrastructure. The report also highlights the clampdown on large-scale illegal dumps, and the emerging threat of fly-tipping and backyard burning.

The rate of urban sprawl in Ireland is also highlighted. If the current rate of urban development of more than 3% growth a year continues, the amount of urbanised land is set to double in only 20 years. The low price of agricultural land compared with already urbanised land is one of the key factors facilitating urban sprawl across Europe.

Although some work needs to be completed in the area, major progress in increasing the treatment of urban wastewater is noted, which is allowing Europe's rivers, lakes and estuaries recover from pollution. The overall quality of water in Ireland is noted as being of a high standard, with a reduction of incidents of serious pollution of rivers and lakes. Eutrophication remains the main threat to surface waters. An increased number of areas of natural habitats are protected, but many species remain threatened across the EU.

Problems remain with regard to climate change, which is already underway according to the report. The temperature is expected to rise by 2-6°C during the 21st century, producing water shortages in some parts of the EU and more severe (and less predictable) weather events in others. Improved energy efficiency has been offset by increased energy consumption demand. Air and road transport are expected to increase – air travel is expected to double its share of overall transport between 2000 and 2030. While car manufacturers have achieved substantial reductions in air pollutants and emissions, citizens in urban areas need to be offered real alternatives to car transportation.

A copy of the report, and the associated indicators used, can be accessed at:

http://reports.eea.eu.int/state_of_environment_report_2005_1/en

European Court Ruling on Restricting Truck Access

The ruling of the European Court of Justice that the regional government of Tyrol in Austria could not impose a total ban on lorries of over 7.5 tonnes from a 46 kilometre stretch of motorway attracted much publicity in the Irish media, with some drawing parallels with proposed plans to ban trucks from Dublin city centre for 12 hours during the day. However, others were quick to point out distinctive features of the Austrian case. In particular, the Austrian case concerned a permanent ban on lorries, with the ban being based on truck weights. In addition, the ban concerned a stretch of road that is a motorway, not a city centre.

The regional government of Tyrol had introduced a temporary night ban on lorries on a section of this motorway in 2002. This temporary night ban was extended, and then replaced, by a permanent night ban. At the end of May 2003, the regional government adopted the contested regulation banning the transportation of goods (such as waste, cereals, minerals, stone, soil, rubble, motor vehicles and steel) by lorry over 7.5 tonnes, to take effect from 1st August 2003.

The European Commission, taking the case against the Austrian government, argued that this regulation mainly affected non-Austrian hauliers, and therefore was discriminatory, and constituted a barrier to the free movement of goods within the EU market. Other possible itineraries involved large detours for operators. If this situation continued, it would entail considerable economic consequences not only for hauliers, but for the manufacturers of the goods affected.

In its ruling, the Court emphasised the importance of the road link in question as a key link between Germany, Austria and Italy. While the Court acknowledged that environmental concerns such as air quality can be used to justify such measures, it argued that the provisions in place were not proportional to the risks.

The Court argued that the regional government did not sufficiently explore the option of a realistic alternative solution for the transportation of goods either by other transport means such as rail or by other road routes. It could have also considered different measures to the one it introduced, which might have included options such as:

- ❑ The possibility of gradually introducing the traffic ban for the various classes of heavy goods vehicle;
- ❑ Restriction of heavy vehicle traffic at peak hours;
- ❑ A night ban of heavy vehicle traffic;
- ❑ The introduction of toll systems based on the quantity of pollutants emitted; or
- ❑ Speed limits.

The European Commission had argued that these measures would be more in line with the principle of rectifying environmental damage at source and would include local traffic. While not addressing this specific point, the Court in its judgement argued that the regional government, before adopting so radical a measure as a *total* prohibition on using a section of motorway that is a vital link between EU countries, should have carefully

examined the possibility of using measures which would have been less restrictive to the free movement of goods.

In addition, the Court found that the 2-month transitional period between the adoption of the regional government's regulation and the deadline for implementing the ban was clearly insufficient to allow operators to adjust to the new circumstances.

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