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Flexibilities with regard to meeting EU regulatory objectives and requirements

Report on Ireland

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I. Policies of prioritising economy and ecology

In recent years, EU environmental policies have more and more been framed around an emphasis on boosting competiveness, and preventing obstacles for the single market as such and small and medium sized businesses in particular. Examples for this tendency can be found in almost every area of EU environmental policy, be it the emphasis on the creation of jobs in the circular economy package or concessions for heavy industries in the emission trading system. Looking at the inherent conflicts between the objective of protecting and preserving the environment, and economic activities, it appears that EU policy- and decision-makers believe in a need to prioritise the latter.

1. Are you aware of similar initiatives, current or planned, in policy- and/or decision-making in your country which result in prioritising economic activities over environmental interests? If so, please provide examples.

[1] Conor Linehan (Partner, William Fry, Dublin) made a very significant contribution to the material in the section of the questionnaire dealing with EU ETS and Effort Sharing. I thank the following people at the Environmental Protection Agency (Ireland) for their assistance in compiling information for different aspects of the questionnaire: Jacinta Ponzi (EU ETS & Effort Sharing); Marie O'Connor (Industrial Emissions Directive); Matthew Craig (Water Framework Directive). Responsibility for the content remains with the author alone.

In Ireland, the most striking contemporary example of the Government's intention to prioritise economic development over environmental protection is the recent announcement of plans to restrict access to judicial review in the specific case of challenges to planning permission (development consent) for strategic infrastructure development. Some background information is necessary in order to set this particular proposal in context.

The 'normal' planning process in Ireland involves the developer making an application for planning permission in the first instance to the relevant local planning authority. Both the developer and third parties have a right to appeal the planning authority's decision to *An Bord Pleanála* (the Planning Appeals Board).[2] In the case of strategic infrastructure development, however, a streamlined process applies and the application for planning permission is made directly to *An Bord Pleanála* (essentially bypassing the local planning authority stage of the process). There is no administrative appeal in the case of strategic infrastructure development. A decision of *An Bord Pleanála* may be challenged by way of judicial review proceedings.

Generally speaking, strategic infrastructure development can be described as development which is of strategic economic or social importance to the State. It includes, for example, major energy infrastructure, environmental infrastructure, major roads, railways, airports etc. In response to the current housing crisis in Ireland, strategic housing development (essentially planning applications for housing development of more than 100 residential units and 200-plus student bed spaces) was recently classified as strategic infrastructure development. The aim here is to speed up the planning process and the delivery of much needed larger housing developments and student accommodation.

Ireland is obviously keen to attract foreign investment and has been very successful in this regard to date, including attracting the much sought after 'tech-giants' Apple, Google, Facebook etc. Unfortunately, one particularly high profile planning application has been the trigger behind the current proposals to restrict access to judicial review in the context of challenges to strategic infrastructure development.

[2] See further: *An Bord Pleanála* website: www.pleanala.ie.

In April 2015, Apple Distribution International ('Apple') applied for planning permission for a data centre in Athenry, County Galway. It was reported in the media that the data centre project involved investment of €850 million, that the construction phase would generate 300 jobs and 100 permanent staff would be employed to run the facility. Planning permission was granted by the local planning authority in September 2015. This permission was then appealed to *An Bord Pleanála* by third party objectors. The Board decided to grant planning permission on 16 August 2016. Judicial review proceedings followed in the High Court, alleging breach of the Environmental Impact Assessment Directive.

On 12 October 2017, the High Court ruled against the third parties who had challenged the planning permission: *Fitzpatrick and Daly v An Bord Pleanála* [2017] IEHC 585[3] and *McDonagh v An Bord Pleanála* [2017] IEHC 586.[4] An application for a certificate for leave to appeal to the Court of Appeal was refused on 1 November 2017: *Fitzpatrick and Daly v An Bord Pleanála* [2017] IEHC 644. An application to the Supreme Court for leave to appeal directly to that court was granted on 26 April 2018: *Fitzpatrick and Daly v An Bord Pleanála* [2018] IESCDET 61.

On 10 May 2018, to the dismay of the Government and those in Athenry who supported the development, Apple announced that it was abandoning its plans for a data centre in Galway. Summary of timeline for the proposed Apple data centre: https://www.rte.ie/news/2018/0510/961458-apple/

Needless to say, the Apple saga attracted significant media attention.[5] The lengthy timeframes involved, in particular as regards the judicial review proceedings, led to calls from business interests for reform of the planning process and for a tightening of the rules governing judicial review.[6]

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[3] http://www.bailii.org/ie/cases/IEHC/2017/H585.html
[4] http://www.bailii.org/ie/cases/IEHC/2017/H586.html
[5] 'Better balance must be found between right to object and the wider interest' *Irish Times* 12 May 2018; 'Speeding up the planning process would be a long, slow slog' *Irish Times* 12 May 2018; '"Strategic infrastructure" quick-step would not have saved Apple's project' *Irish Times* 7 November 2017; 'Changes to planning laws considered in light of Apple data centre delay' *Irish Times* 15 September 2017.
[6] For example, it was reported in the *Irish Times* that the *Taoiseach* (Prime Minister) had met with Apple executives who had expressed 'frustration at the legal and planning

In November 2017, shortly after the conclusion of the High Court proceedings in the Apple case, the Government confirmed that data centres would, in future, be classified as strategic infrastructure development with a view to accelerating the planning process for such facilities. It is anticipated that this change will be enacted in the Planning and Development (Amendment) Bill 2016, which is currently at Committee Stage in *Seanad Éireann* (the Senate).

On 2 February 2018, the President of the High Court of Ireland issued a Practice Direction on judicial review proceedings involving strategic infrastructure development. Essentially, pursuant to Practice Direction HC74, as and from 26 February 2018, a specific High Court judge has been designated to hear applications for judicial review in strategic infrastructure cases.[7] The intention here is to attempt to accelerate judicial review proceedings involving strategic infrastructure development in response to the Apple experience.

In addition to this new development, the Review Group on Administration of Civil Justice, which is chaired by the President of the High Court, has been requested by Government to consider a number of additional procedural reforms to judicial review proceedings, including the scope for a strengthened pre-hearing process and possible use of a written-submissions only process.

In the most significant development following the Apple controversy, on 6 February 2018, the Government approved a number of proposed measures relating to judicial review proceedings involving strategic infrastructure development.[8] It is anticipated that these measures will include: reducing the time period to seek leave to apply for judicial review from the current period of eight weeks to four weeks; setting out criteria by which to determine whether an applicant seeking leave to bring judicial review has 'a sufficient interest' in the matter (i.e. tightening the *locus standi* requirements); and prescribing requirements for the NGOs that are deemed to have standing to bring

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delays that have delayed [their] investment' ('Changes to planning laws considered in light of Apple data centre delay' *Irish Times* 15 September 2017).

[7] HC74 *Judicial Review Applications in respect of Strategic Infrastructure Development* (2 February 2018).

[8] 'Proposed rules aim to limit challenges to building projects' *Irish Times* 7 February 2018.

judicial review proceedings (e.g. it is expected that NGOs will have to demonstrate that they are not-for-profit, that they are active in environmental matters and that they were established more than three years prior to the relevant application for leave to bring judicial review proceedings). It is anticipated that these measures will be included in a forthcoming Planning Bill later in 2018.

Concerns have already been raised about the extent to which the proposed measures 'are compatible with the spirit of, if not the obligations under, the Aarhus Convention.'[9] Any commentary must await publication of the draft legislation. It is clear at this stage, however, that any attempt to restrict access to judicial review will be resisted vigorously by environmental NGOs.

II. Techniques aiming at introducing more flexibility to or even diluting regulation

1. Offsetting regulatory directions

a) EU-ETS

In the current EU emission trading system (EU-ETS) framework, MS are allowed to use credits from outside the EU-ETS within this trading system. Those international credits result either from emission reduction projects in developing countries (Clean Development Mechanism; Art 11a EU-ETS Directive) or from greenhouse gas reduction projects among developed countries (Joint Implementation, Art 11a EU-ETS Directive). These credits are tradable within the EU-ETS and can thus be used to comply with requirements under the EU-ETS. As of 30 April 2016 the total number of international credits (CER and ERU) used or exchanged accounts for over 90 % of the allowed maximum.

1. (How) was the possibility of using international credits transposed into national legislation?

[9] Editorial, 'Fallout from Apple' (2018) 25 *Irish Planning and Environmental Law Journal* 2.

General transposition of the EU ETS in Ireland

In Ireland, the EU ETS Directive was transposed initially by the European Communities (Greenhouse Gas Emissions Trading) Regulations 2004 (SI No 437 of 2004). These regulations have been amended on a number of occasions and further sets of regulations have been adopted in order to update the relevant national rules to take account of new developments at EU level. The principal set of current regulations is the European Communities (Greenhouse Gas Emissions Trading) Regulations 2012 (SI No 490 of 2012). The Environmental Protection Agency (EPA) is the competent authority in Ireland for EU ETS.

According to the EPA, there are currently 103 stationary installations with open accounts and two more are due to open accounts in 2018. These installations include sites operating in the power generation, cement, lime and oil refining sectors, as well as large companies in sectors such as food and drink, pharmaceuticals and semi-conductors. Fourteen aviation operators are also currently included in the EU ETS, including six large Irish licensed commercial airlines. In April 2018, the EPA reported that Ireland's greenhouse gas emissions from stationary operators in the EU ETS decreased for the first time since 2013.[10]

Use of Credits in Phase II

In Phase II ETS (2008-2012) an operator of a stationary installation was entitled to surrender international credits up to a percentage of their Phase II free allocation (11% in the power generation sector; 11% in the cement sector and 5% in the general sector).[11]

[10] https://www.epa.ie/newsandevents/news/pressreleases2018/name,63863,en.html.

[11] Pursuant to Annex III, criterion 12 of Directive 2003/87/EC (as amended by Directive 2004/101/EC), Member States' National Allocation Plans were required to specify the maximum amount of CERs and ERUs that may be used by operators in the EU ETS scheme as a percentage of the allocation of the allowances to each installation. This criterion was transposed into Irish law pursuant to Article 9(1a) of the then current Irish regulations, the European Communities (Greenhouse Gas Emissions Trading) Regulations 2004 to 2005 (SI No 237 of 2004 as amended by SI 706 of 2005). The National Allocation Plan for 2008-2012 had been prepared by the Environmental Protection Agency and the Department of the Environment, Heritage and Local Government. See *Ireland's National Allocation Plan for Emissions Trading 2008-2012* (March 2008):

Use of Credits in Phase III – Transposing Measures

The rules in Ireland on the use, during Phase III, of international credits reflect the conditions/restrictions that are laid down at EU level, namely:

- the restriction that, for Phase III, CERs and ERUs for emissions reductions up to 2012 are no longer compliance units within the EU ETS and, in order to be used in Phase III, must be *exchanged* for EU allowances;
- the restriction that the only new (post-2012) project credits usable in Phase III are those CERs issued in respect of new projects started from 2013 onwards in Least Developed Countries (LDCs), which CERs must also be *exchanged* (for EU allowances) for use in Phase III.
- The *quantitative* limits on the *use* of such exchanged allowances during Phase III.

In Ireland, those conditions/restrictions are expressed in a combination of:

- specific articles/regulations on the use of international credits that are contained within the Irish statutory instruments that transpose the wider EU ETS scheme in Ireland, as it relates to (i) stationary installations and (ii) aviation; and
- Regulation (EU) No 1123/2013, with its direct application to Ireland as a Member State.

The Irish transposing statutory instruments impose the requirement to *exchange*, but without specifying the quantitative limit on the *use* of exchanged allowances during Phase III. However, the *quantitative limit* on the *use* of allowances (exchanged allowances) derives directly from the Regulation (EU) No 1123/2013.

In relation to *stationary installations,* during Phase III, an operator of a stationary installation, in order to be able to use in Phase III any CERs or ERUs generated in respect of emission reductions up to 2012, is required to apply to the EPA to exchange them for EU Allowances. Again, the requirement to exchange comes from the current

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http://www.epa.ie/pubs/reports/air/etu/NAP2%20_Final%20_Allocation%20_Decision_040320082.pdf

general set of Irish regulations that transpose the EU ETS for stationary installations, namely Article 15 of the European Communities (Greenhouse Gas Emissions Trading) Regulations 2012 (SI No 490 of 2012). Article 15 of the 2012 Regulations also covers the requirement to exchange any post-2012 LDC CERs proposed to be used in Phase III.

As mentioned, the extent to which exchanged credits may be *used* in Phase III derives directly from Regulation (EU) No 1123/2013. In Phase III, stationary installations may use up to 11% of their Phase II free allocation, less the number of international credits surrendered during Phase II. New entrants or operators of installations permitted after 30 June 2011 are entitled to use international credits in the period 2008-2020 up to a maximum of 4.5% of verified emissions in the period 2013-2020. Operators of installations with a significant capacity extension (pursuant to Article 20 of Decision 2011/278/EU) are entitled to use international credits in the period 2008-2020 up to 11% of Phase II allocation or 4.5% of verified emissions in the period 2013-2020, whichever is the higher.

As regards aircraft operators, transposition of the requirement on aircraft operators to exchange CERs and ERUs generated from emission reductions up to 2012 into EU allowances and also to exchange new (post-2012) CERs from LDCs is achieved by Article 15A of the European Communities (Greenhouse Gas Emissions Trading) (Aviation) Regulations 2010 (SI No 216 of 2010) as inserted by Article 4 of the European Communities (Greenhouse Gas Emissions Trading) (Aviation) (Amendment) Regulations 2014 (SI No 553 of 2014). Regulation (EU) No 1123/2013 then establishes the *quantitative limit* on the use of international credits for aviation operators in Phase III, namely an entitlement to use international credits up to a maximum of 1.5% of its verified emissions during the period from 2013 to 2020, without prejudice to any residual entitlement from 2012.[12]

Calculation and publication of the international credit entitlements of each operator

The EU requirement on Member States to calculate and publish the international credit entitlement of each stationary installation operator and each aircraft operator and to

[12] Regulation (EU) No 1123/2013, Article 1(5).

notify the Commission[13] has been transposed/given effect to in Ireland by administrative practice. The EPA has undertaken the calculations and notified them to the Commission and the information for Irish operators has been published by the Commission.[14]

***Qualitative* restrictions on international credits**

There are no specific transposition provisions in Ireland on this; but the objective is secured through the use, in the Irish statutory instruments transposing the EU ETS, of general expressions such as "CERs and ERUs for all project types eligible for use in the Community (EU ETS) scheme…" and "[t]he use of CERs and ERUs pursuant to this Regulation shall be in accordance with the Commission's Restrictions on Industrial Gas Credits".

2. Has your country used the possibility of using international credits to comply with EU-ETS requirements? If so, to what extent? Are you aware of the reasons for relying on this possibility?

There has been very limited use. The extent of free allocation in Phase II generated little market need; and even in Phase III there has not been a strong market need. The somewhat tighter Phase III allowance allocations were off-set in many cases by recession-related lower production and therefore lower emission levels and also recession-related, depressed overseas investment capacity from Ireland in Clean Development Mechanism (CDM) and Joint Implementation (JI) projects. Where use of international credits has occurred it has been mainly through the power generation sector which has no free allocation for Phase III. The State power company, Electricity Supply Board (ESB), which already has overseas operations in related activities and in renewable energy projects, has been in a positon to generate some international credits.

3. How is the change to a domestic emissions reduction target received in your country? Is this change expected to affect your country's abilities to comply with EU-ETS requirements? Are you aware that other possibilities are discussed to compensate the loss of the flexibility through international credits?

[13] Regulation (EU) No 1123/2013, Article 2.
[14] See: http://ec.europa.eu/environment/ets/ice.do;EUROPA_JSESSIONID=lOrMouBIHTTmkdqg2B3Cf9Yg0ks8xHsgJrhE07az5wMaE_v3ravt%21153710217?languageCode=en

The change to a domestic emissions reduction target does not appear to have generated any significant discussion in Ireland to date. The flexibilities /use of credits available in Phase II of the EU ETs and the *partial* flexibilities/*restricted* use of credits in Phase III, and the fact that the EU does not envisage continuing the use of credits after 2020, have not been overtly viewed as obstacles or a set-back to Ireland's GHG reduction compliance prospects. This is notwithstanding that Ireland is challenged to meet its non-ETS (Effort Sharing Decision) target and, indeed currently, that Ireland envisages using international credits to assist in meeting its 2020 Effort Sharing Decision commitment (see below). Give Ireland's challenge it is difficult to say why the loss of flexibility is not subject to more comment.

b) Effort Sharing (Non-ETS)

In the current framework for non-ETS sectors, targeted by the Effort Sharing Decision (ESD), MS are provided with a range of flexibilities in order to meet their (respective) reduction targets. MS are allowed to bank and borrow their (surplus) annual emission allocations (Art 3.3 ESD) as well as to transfer annual emission allocations to another MS (Art 3.4 ESD). In addition, MS can also use international project credits from emission reduction projects in developing countries (Clean Development Mechanism) or from greenhouse gas reduction projects among developed countries (Joint Implementation) to meet their commitments under the ESD (Art 5 ESD). In a 2016 report, the Commission finds that so far, no MS has used any of the flexibility instruments provided in the ESD, yet a change is expected in the years to come (SWD(2016) 251 final).

1. (How) were the flexibility mechanisms of the ESD transposed into national law?

There was no specific legislative measure transposing the flexibility mechanisms under the Effort Sharing Decision. Rather, the State simply took note of the availability of these flexibilities. See, however, the reference to Ireland's Carbon Fund Act 2007 in the next answer below and how the fund of international credits accumulated under Ireland's "Carbon Fund", while intended initially in respect of our Kyoto Protocol commitments, is now likely to be directed towards assisting with Ireland's Effort Sharing Decision commitment.

2. Has your country used any of the flexibility mechanisms yet in order to comply with ESD requirements? If so, to what extent?

No usage as yet for the ESD compliance cycles. However, Ireland anticipates that it may be using international project credits to meet a current significant shortfall under its Effort Sharing Decision 2013-2020 GHG reduction commitment. The following is the context.

In 2007, Ireland established a State "Carbon Fund". The Fund was established under the Carbon Fund Act 2007. It was in the lead-in to the Kyoto Protocol's first commitment period (2008-2012). The purpose of the Fund was to purchase carbon units on behalf of the State. The units are called “Kyoto Units” in the 2007 Act – from the CDM and JI project mechanisms. The purpose was to meet the then anticipated shortfall/gap in meeting Ireland's Kyoto target. Following the economic recession, the requirement to purchase credits for Kyoto purposes was significantly reduced. Various purchases have been made however by the National Treasury Management Agency (NTMA). The Fund is operated for the State by the NTMA. The accumulated fund of credits was then earmarked for the second/later Kyoto commitment period (2013-2020). At the year-end 2016, there were 5,329,964 units in the fund. However, the units are now being regarded in light of Ireland's commitment under the EU's 2020 Climate Energy Package - of which Ireland's "Effort Sharing Decision" country target is a part. Ireland's country target under the Effort Sharing Decision is, by 2020, to reduce GHG emissions by 20% relative to 2005 levels and to do so along a particular annual reduction trajectory. According to the Irish EPA, however, Ireland is projected to exceed its binding Effort Sharing Decision limits for each year between 2016 and 2020. Depending on how many additional mitigation measures are implemented before 2020, the cumulative shortfall relative to our obligations is in the range of 11.5 – 13.7 Million tonnes CO_2e by 2020. The Government's position is that "it is anticipated that the units in the Carbon Fund will be used towards meeting this gap".[15]

[15] National Treasury Management Agency, *Carbon Fund Annual Report 2016: Report and Accounts of the Carbon Fund for the Year Ended 31 December 2016.* This is the most recently published Annual Report as of 18 May 2018. The Report for the year ended 31 December 2017 is due to be published by 30 June 2018.

3. How is this proposal on further flexibility mechanisms received in your country? If the proposal becomes law, would you expect your country to rely on those flexibility mechanisms in the future?

No definite information is currently available on proposed future developments e.g. under the proposed Effort Sharing Regulation (ESR), intended to replace the Effort Sharing Decision for the post-2020 period. Generally speaking, there is support for flexibility mechanisms, particularly in relation to meeting ESD/ESR targets.

Ireland continues to struggle with decoupling GHG emissions from economic growth and therefore it must be anticipated that it will have to place some reliance on flexibility mechanisms. Also, because of Ireland's very high incidence of agricultural emissions (part of the Effort Sharing Decision/proposed Effort Sharing Regulation sector), the proposed cross-flexibilities between (i) the EU's proposed Effort Sharing Regulation and (ii) removals achieved by Member States under the EU's proposed regime on LULUCF are likely to be particularly relevant to Ireland and highly likely to be utilised.

2. Exemptions from regulatory directives

a) Water Framework Directive: Establishing less stringent environmental objectives

The Water Framework Directive (WFD) establishes the overall objective of achieving "good status" for all waters, in view of which, ia, environmental objectives are set for different types of waters. Art 4.5 of the Directive provides for the possibility of deviating from these environmental objectives set by the Directive with regards to specific bodies of water which are affected by human activity or when their natural condition is such that it may be unfeasible or unreasonably expensive to achieve good status. Such less stringent environmental objectives may only be set after evaluating other options and measures are taken to ensure the highest quality status/the least deterioration possible, and all practicable steps are taken to prevent any further deterioration of the status of waters. MS are required to include the establishment of such less stringent environmental objectives and the reasons for it in the river basin management plan for the respective river basin district (Art 13 WFD). The less stringent environmental objectives are to be reviewed every six years.

1. (How) was the possibility of establishing less stringent environmental objectives transposed into national law? Is the transposing legislation stricter than Art 4.5 by, e.g., adding further requirements for deviating from the environmental objectives?

The relevant provisions are the European Communities (Water Policy) Regulations 2003 (SI No 722 of 2003); European Communities Environmental Objectives (Surface Waters) Regulations 2009 (SI No 272 of 2009) Article 31; and the European Communities Environmental Objectives (Groundwater) Regulations 2010 (SI No 9 of 2010) Article 17.[16] Essentially, the Irish provisions mirror Article 4(5) WFD and do not provide for more stringent conditions.

2. Have national authorities relied on the option of establishing less stringent environmental objectives in their river management plans? If so, to what extent and for what reasons? If not, why?

The WFD Article 4(5) 'natural condition' exemption is used for a small number of water bodies in Ireland. One specific example is the Avoca River catchment in County Wicklow. Here, naturally elevated metals and historic mining has elevated levels of metals within the bedrock aquifer and sediments that are discharging slowly into the Avoca River. Although measures are being taken to minimise the impact from point discharges to the river, it is practically impossible to minimise the diffuse discharges. It follows that it may well be decades before these flush through the system and for the Avoca River to achieve the good status objective. The 'natural condition' exemption is therefore being applied to indicate a lower objective for the Avoca River.

WFD Article 4(6) (temporary deterioration) has not been used to date. Under WFD Article 4(3) there are only a small number of artificial and heavily modified water bodies. The vast majority of water bodies that are not meeting their environmental objectives currently (i.e. are at a moderate or worse status) have had the Article 4(4) exemption based on extended deadlines (i.e. 2021 or 2027) applied.

[16] See further: J Fitzsimons, 'Issues with Interpretation and Implementation of the Water Framework Directive in Ireland' (2017) 24 *Irish Planning and Environmental Law Journal* 112 and Environmental Protection Agency, *Water Quality in Ireland 2010-2015* (2017) https://www.epa.ie/pubs/reports/water/waterqua/waterqualityinireland2010-2015.html

3. If national authorities have established less stringent environmental objectives in their river management plans, are these objectives regularly reviewed? Have such less stringent environmental objectives been adapted or even lifted?

Reviews are undertaken ahead of each WFD planning cycle deadline. As the hydromorphology work progresses, it is possible to make more robust judgments.

4. Are there possibilities for the public to challenge the establishment of less stringent environmental objectives in river management plans? If so, please describe those possibilities briefly.

A decision to establish less stringent environmental objectives in river management plans may be challenged by way of judicial review proceedings.

There is provision for public engagement and consultation at each stage of the six year WFD planning cycle, including, in particular, the Significant Water Matters report and the draft River Basin Management Plan consultations.[17] The establishment of the Water and Communities Office (LAWCO) in 2015 enables wider community engagement.[18]

b) Industrial Emissions Directive: Setting less strict emission limit values

The Industrial Emissions Directive (IED) requires MS authorities, in permitting industrial installations covered by the Directive, to set emission limit values which ensure that emissions do not exceed the emission levels associated with the best available techniques (BATs; Art 15.3 IED). However, if due to the geographical location/the local environmental conditions or the technical characteristics of the installation concerned achieving those emissions limits would lead to disproportionately higher costs compared to the environmental benefits, MS authorities may set less strict emission limit values as part of the permit. As part of the permit conditions, the less strict emission limit values must be reviewed in accordance with Art 21 IED.

[17] *Public Consultation on the Draft River Basin Management Plans for Ireland 2018-2021:* http://www.housing.gov.ie/water/water-quality/river-basin-management-plans/public-consultation-draft-river-basin-management.

[18] The Water and Communities Office: http://watersandcommunities.ie/

1. (How) was the option of setting less strict emission limit values as permit conditions transposed into national law? Is the transposing legislation stricter than Art 15.4 by, e.g., adding further requirements for deviating from the emission limit values?

Section 86A(6) of the Environmental Protection Agency Act 1992, as amended transposed Article 15(4) of the Industrial Emissions Directive (IED). The transposing legislation mirrors Article 15(4) of the IED and does not add further requirements for deviating from the emission limit values.

2. Have national authorities relied on the option of setting less strict emission limit values in permitting industrial installations? If so, to what extent, for what reasons and for which types of industrial installations? If not, why?

The Environmental Protection Agency granted a derogation pursuant to Article 15(4) IED to one installation for a limited period. The relevant licence is the Industrial Emissions Licence granted to Irish Cement Ltd, Castlemungret, County Limerick on 9 November 2017, Licence Register Number P0029-05:

http://www.epa.ie/licences/lic_eDMS/090151b280652a3a.pdf

3. If national authorities have set less strict emission limit values in permitting industrial installations, is there a requirement to review these permit conditions regularly?

Section 86A(6)(c) of the Environmental Protection Agency Act 1992 (as amended) requires the EPA to 're-examine' the attachment of conditions to a licence which specifies less strict emission limit values on any subsequent review of the licence. In the one case where a derogation was granted (see Q2 above), it was granted for a specific timeframe only.

4. Are there possibilities for the public to challenge the setting of less strict emission limit values as part of permit conditions, the lack of review of such less strict emission limit values respectively? If so, please describe those possibilities briefly.

As part of the licensing process for an Industrial Emissions Licence, the Environmental Protection Agency (the competent authority) issues a draft licence (a proposed determination of the licence application). Members of the public may lodge an 'objection' to the draft licence.[19] Anyone who submits a valid objection may request

[19] See further: *Industrial Emissions Licensing Process Explained* https://www.epa.ie/licensing/industrialemissionslicensing/licensingprocessexplained/

an oral hearing. The Environmental Protection Agency considers all objections before determining the licence application. The decision to grant an Industrial Emissions Licence may be challenged by way of judicial review in the High Court.