# Response to request for comments on proposal to await a decision on a Preliminary Reference to the CJEU related to costs

# (in the case of North East Pylon Pressure v ABP & Eirgrid)

# From Communicant (C113) – Date of Reply: 28 November 2016

Re: Communication to the Aarhus Convention Compliance Committee concerning compliance by Ireland in connection with the cost of access to justice (ACCC/C/2014/113)

## Introduction

The seven questions raised by Justice Humphreys in the case of *North East Pylon Pressure v An Bord Pleanála*[1] (NEPP, from hereon) are important and interesting in the context of providing clarification of the law on costs applicable to some environmental actions.

As the Committee has noted, there is an overlap of some of the principles at issue in NEPP and in my communication, at least by analogy, even if not directly on point. A clarification of EU laws that relate to costs might impact on an assessment of compliance by Ireland with the Aarhus convention. In this context, it is understandable that the ACCC would consider awaiting an expected ruling on the issues raised in NEPP; by awaiting the CJEU ruling and the application of that ruling by the Irish courts, the ACCC would be able to better tailor its findings and potential recommendations.

## My Assessment

Initially, the HC in NEPP had sought an expedited ruling from the CJEU. However, the CJEU has now ruled that the case is not eligible for an expedited procedure, under the Rules of Court of the CJEU.[2] This means that the CJEU case will likely take between 18 and 24 months from referral, to be heard, which equates to about 12 to 18 months from now.

Clearly, Justice Humphreys is anxious to make a ruling in the case as quickly as possible thereafter.

However, I have to submit, that given the range of issues involved, and the money (costs) at stake, there is a high probability that the case will be appealed to the Court of Appeal and thereafter to the Supreme Court following the issuance of CJEU guidance. The Court of Appeal process alone could take

[1] *North East Pylon Pressure Campaign Limited & Maura Sheehy v An Bord Pleanála & The Minister for Communications, Energy and Natural Resources, Ireland & The Attorney General & Eirgrid PLC* (No. 2) [2016] IEHC 490.

[2] C-470/16 *North East Pylon Pressure Campaign and Sheehy* ECLI:EU:C:2016:736 (29/09/2016).

up to three years following a HC ruling.[3] Even if a leapfrog appeal to the Supreme Court (SC) was allowed, which is unusual, the case would likely not be determined for at least two and a half years from now. If the more normal route of appeal to the Court of Appeal is followed by an appeal to the Supreme Court[4], then the case could take up to five years from now to be determined.

The second important concern is that, any clarification of the law, will likely only apply to state emanations. In this case, the notice party just happens to be a state emanation, and thus is gripped by one aspect of the direct-effect doctrine of EU law, as per the principle outlined in the *Foster v British Gas* CJEU case.[5] However, in a typical Judicial Review case involving ABP [*An Bord Pleanála]* or the EPA, the notice party is predominantly a private party. In fact, I have to submit that about 95% of such cases involve a private actor, whom will fall outside the grip of direct-effect.

**The seven questions raised in C-470/16:**

(i) in the context of a national legal system where the legislature has not expressly and definitively stated at what stage of the process a decision is to be challenged and where this falls for judicial determination in the context of each specific application on a case-by-case basis in accordance with common law rules, whether the entitlement under art. 11(4) of Directive 2011/92/EU to a "not prohibitively expensive" procedure applies to the process before a national court whereby it is determined as to whether the particular application in question has been brought at the correct stage;

(ii) whether the requirement that a procedure be "not prohibitively expensive" pursuant to art. 11(4) of Directive 2011/92/EU applies to all elements of a judicial procedure by which the legality (in national or EU law) of a decision, act or omission subject to the public participation provisions of the directive are challenged, or merely to the EU law elements of such a challenge (or in particular, merely to the elements of the challenge related to issues regarding the public participation provisions of the directive);

(iii) whether the phrase "decisions, acts or omissions" in art. 11(1) of Directive 2011/92/EU includes administrative decisions in the course of determining an application for development consent, whether or not such administrative decisions irreversibly and finally determine the legal rights of the parties;

(iv) whether a national court, in order to ensure effective judicial protection in the fields covered by EU environmental law, should interpret its national law in a way which, to the fullest extent possible, is consistent with the objectives laid down in art. 9(3) of the UNECE Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters done at Aarhus on 25th June, 1998 (a) in a procedure challenging the validity of a development consent process involving a project of common interest that has been designated under Regulation No. 347/2013 of the European Parliament and of the Council of 17th April, 2013 on guidelines for trans-European energy infrastructure, and/or (b) in a procedure challenging the validity of a development consent process where the development affects a European site designated under

[3] In the case of *Nowak*, the appeal took about 3 years from the decision of the HC. *Nowak v Data Protection Commissioner* [2012] IEHC 449. (7th March 2012 to 24th April 2015).
[4] In *Nowak*, the time between the Court of Appeal decision and the SC decision was one year. (24th April 2015 to 28th April 2016); this case-file is enclosed with my reply of 9 June 2016.
[5] Case C-188/89 *Foster v British Gas* [1990].

Council Directive 92/43/EEC of 21st May, 1992 on the conservation of natural habitats and of wild fauna and flora;

(v) whether, if the answer to question (iv)(a) and/or (b) is in the affirmative, the stipulation that applicants must "meet the criteria, if any, laid down in its national law" precludes the Convention being regarded as directly effective, in circumstances where the applicants have not failed to meet any criteria in national law for making an application and/or are clearly entitled to make the application (a) in a procedure challenging the validity of a development consent process involving a project of common interest that has been designated under Regulation No. 347/2013 of the European Parliament and of the Council of 17th April, 2013 on guidelines for trans-European energy infrastructure, and/or (b) in a procedure challenging the validity of a development consent process where the development affects a European site designated under Council Directive 92/43/EEC of 21st May, 1992 on the conservation of natural habitats and of wild fauna and flora;

(vi) whether it is open to a member state to provide in legislation for exceptions to the rule that environmental proceedings should not be prohibitively expensive, where no such exception is provided for in Directive 2011/92/EU or the UNECE Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters done at Aarhus on 25th June, 1998; and

(vii) in particular, whether a requirement in national law for a causative link between the alleged unlawful act or decision and damage to the environment as a condition for the application of national legislation giving effect to art. 9(4) of the UNECE Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters done at Aarhus on 25th June, 1998 to ensure that environmental proceedings are not prohibitively expensive is compatible with the Convention.

**My assessment of the seven questions:**

**Question 1**

A key question arising in my communication, is whether a hearing which assesses an entitlement to costs protection should itself attach costs protection so as to ensure that the procedures are not prohibitively expensive in a practical and effective manner.

While, I see some overlap with question one to this "catch 22" issue, there is a significant risk that an answer or interpretative guidance to question one might be provided without engaging in an analysis that would provide guidance to the "catch 22" question.

**Question 2**

Question 2 queries whether, in a situation where some claims engage EU law issues and others engage national law issues alone, should the costs protection provisions apply to both? This question, corresponds, by analogy, to the problem I had raised in relation to the *McCallig*[6] decision; where if some claims fall within the SCP and others fall without, should a flexible or proportionate approach be taken? An answer here might outline relevant principles that may be applicable to the *McCallig* problem.

[6] *McCallig v An Bord Pleanála* [2014] IEHC 353 (I refer to my clarification of 17 December 2014; see reference to "anomalous outcome" on page 12).

**Question 3**

Question 3 is a technical question, which appears not to apply to my communication.

**Questions 4 and 5**

The HC raises, in questions 4 and 5 the issue of the possible application of Article 9(3) of Aarhus on the basis of the *LZ direction* that 9(3) should be interpreted to the 'fullest extent possible' in interpreting national law.[7]

The *LZ* direction appears positively impactful; however, there is no evidence that this direction is other than a standard requirement to interpret any ambiguities in national law in harmony with the Aarhus convention. In other words, it appears, that the term 'to the fullest extent possible' equates to 'the least extent possible', because there is only one possible interpretation that can apply – a weak interpretative provision.

The SC has held, in the recent case of *Sweetman v Shell*[8], which was delivered subsequent to the NEPP preliminary reference, that the *LZ* direction cannot overrule default national costs rules.[9] Hence, even if the CJEU affirmed that the *LZ* direction was applicable here, it appears likely that this will not progress matters as, 'no such interpretation can be contrary to law'.[10]

**Questions 6 and 7**

Question 6 queries whether it is open to a state to enact legislative exceptions to the "not prohibitively expensive" provision of an EU directive (Directive 2011/92/EU), where neither the Directive or the Aarhus convention provides for any such exceptions. This question clearly overlaps, in a direct way, with my query as to the compatibility of the conditions ( (1) conduct of proceedings (2) contempt of court and (3) frivolous or vexatious ) which apply to the S.50B provision and the 2011 Act. The implied suggestion that the absence of prescribed exceptions in the Directive could possibly preclude any exceptions, regardless of the reasonableness of such exceptions, is an interesting approach which would, if answered in the affirmative, negate the need to evaluate the degree of interference of those conditions and would provide great clarity.

The HC has held that S.50B does not apply to the NEPP case.[11] The HC makes reference to arguments being advanced in relation to the applicability of S.3/S.4 of the 2011 Act. However, the HC has made no ruling on this issue and it is difficult to see how the 2011 costs provisions are engaged by the case.

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[7] Case C-240/09 *Lesoochranárske Zoskupenie v Slovakia* [2011] CJEU ECLI:EU:C:2011:125, para 51.
[8] *Sweetman v Shell* [2016] IESC, 17/10/2016.
[9] See para 8 of Sweetman (n 8); 'It is contended to be an obligation of European law "to interpret, to the fullest extent possible, the procedural rules in relation to the conditions to be met" for actions brought in conformity with the Aarhus Convention; see para 52 of case C-240/09 judgment of the Court (Grand Chamber) of 8 March 2011, *Lesoochranárske zoskupenie VLK v Ministerstvo životného prostredia Slovenskej republiky*. Of course, no such interpretation can be contrary to law, that would be for the courts wrongfully to distort the meaning of the enactment and so overturn the obligation of the legislature under Article 15.2 of the Constitution to exercise the "sole and exclusive power of making laws for the State"; see *Pfeiffer and Others v. Deutsches Rotes Kreuz* [2004] E.C.R. I-08835 (C-397/01 to C-403/01) paras 111 to 113. This is sometimes called the *contra legem* rule. That obligation of interpretation is central. The text of the Act of 2011 is key.'.
[10] *Sweetman* (n 8).
[11] See - para 39 of *North East Pylon* (n 1); 'As I have determined that s. 50 of the 2000 Act does not apply to this action…'.

I have to therefore respectfully submit, that there is a significant possibility that questions 6 and 7 will be ruled inadmissible by the CJEU on grounds that the applicability of S.3/S.4 of the 2011 Act is hypothetical[12] and unlikely to be determinative of the costs issues in the case.

While the CJEU holds that there is a presumption of relevance to questions raised in a preliminary reference[13], the CJEU can potentially evaluate that that facts of the case are insufficiently clear to establish that either S.50B or S.3/S.4 [2011] are engaged, and therefore that the uncertainties applicable to both (regarding exceptions to costs protection, due to contempt of court/conduct of proceedings/ or whether frivolous of vexatious) or the conditionality of the 2011 provisions (re proving likely damage to the environment, as required by S.4(1)(b)(b)of the 2011 Act), as raised in question 7, are only hypothetically engaged in this case.[14]

Further, it is possible that the CJEU may hold that the case can be disposed of by ruling on question 1 alone. The Court could rule that the principle of effectiveness of EU law requires that the costs protection of Directive 2011/92/EU be engaged and thus that the *Edwards* criteria[15] should be applied to the level of costs. This could leave the other questions unanswered. If this were to happen, then the outcome of NEPP would be very tangential to my communication.

## Limitation of Direct Effect to state emanations

At best, it is submitted that even if the Court provides a favourable outcome to each question raised; the result will only affect about 5% of Judicial Review cases, which is that cohort of cases which involve state emanations within the meaning of relevant EU law.[16] Where two respondents are involved, one being a state emanation and the second being a private entity (either of which could be a respondent or notice party), which is a more typical scenario, the threat of an adverse costs award in relation to the private entity alone, will render most such cases prohibitively expensive, even if the state emanation is not entitled to costs recovery (or recovery by the state party is *Edwards* limited).

In *Friends of the Curragh Environment*[17], Justice Kelly stated, 'Thirdly, direct effect has no horizontal effect. It may only be relied upon as against a Member State or an emanation of the State. (Vertical effect) This third proposition rules out the possibility of a PCO being made in respect of the Turf Club.'

[12] See- C-657/13 *Verder LabTec v Finanzamt Hilden*, CJEU, 21 May 2015, para 29;
'The Court may refuse to rule on a question referred by a national court only where it is quite obvious that the interpretation of EU law that is sought bears no relation to the actual facts of the main action or its purpose, where the problem is hypothetical, or…'.

[13] Ibid; '…questions on the interpretation of European Union law referred by a national court in the factual and legislative context which that court is responsible for defining, and the accuracy of which is not a matter for the Court to determine, enjoy a presumption of relevance.'

[14] See, for example, Case C-156/15 *Private Equity Insurance Group v Swedbank*, CJEU, 10 November 2016, para 56; 'In that regard, according to the Court's established case-law, the justification for a request for a preliminary ruling is not that it enables advisory opinions on general or hypothetical questions to be delivered but rather that it is necessary for the effective resolution of a dispute concerning EU law (see, to that effect, judgment of 7 November 2013, Romeo, C-313/12, EU:C:2013:718, paragraph 40 and the case-law cited).'.

[15] *Edwards/ Pallikaropoulos v Environmental Agency (U.K.); Case C-260/11 CJEU [2013].*

[16] See- *Foster v British Gas* (n 5).

[17] *Friends of The Curragh Environment v An Bord Pleanála* (And notice parties The Trustees of the Turf Club, Kildare County Council, Percy Podger and Associates, Geraldine MacCann) [2006] IEHC 243.

## Direct Effect of Article 9(4)?

It is unclear to me whether the ACCC, in considering postponing a decision on my communication, is solely focused on the possibility that the CJEU may provide clarification of some of the principles arising in my communication, or whether it is also focused on how this clarification may alter the level of non-compliance by Ireland with the convention. If the latter issue is involved, then I think it is relevant to review whether EU directives which seek to partially implement the costs requirement of Article 9(4) of Aarhus, have direct effect.

In two Irish cases involving the direct effect of 10a of the EU Directive 85/337 (giving effect to Article 9(4) of Aarhus), the court ruled that it did not have direct effect.[18] In each case, the court affirmed that Article 9(4) of Aarhus does not have direct effect, as it is insufficiently precise. In *McCoy (CA)*[19], Justice Hogan, similarly appeared to indicate that Aarhus 9(4) is not sufficiently precise and unconditional. See; para 19:

> *All of this means that neither Article 9(3) or, for that matter, Article 9(4) can be regarded as prescribing firm criteria which would facilitate any judicial assessment of whether their objectives had actually been met by legislation (whether at EU or, as here, national level) designed to give effect to these provisions.*

**EU position on direct effect?**

The CJEU has ruled in two instances, (1) *LZ v Slovakia* (2011) (Brown Bears) and in (2) Joined cases C-404/12 P and C-405/12 P *Council v Stichting Natuur en Milieu and Milieu and Pesticide Action Network Europe* [2015], that Article 9(3) of Aarhus does not have direct effect.

In *LZ* the CJEU stated – at paras:

> 45 It must be held that the provisions of Article 9(3) of the Aarhus Convention do not contain any clear and precise obligation capable of directly regulating the legal position of individuals. Since only members of the public who meet the criteria, if any, laid down by national law are entitled to exercise the rights provided for in Article 9(3), that provision is subject, in its implementation or effects, to the adoption of a subsequent measure.
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> 46 However, it must be observed that those provisions, although drafted in broad terms, are intended to ensure effective environmental protection.

[18] See- *Sweetman v An Bord Pleanála, Ireland and the Attorney General and Clare County Council (Notice Party)* [2007] I.E.H.C. 153, where Justice Clarke ruled at para 7.1; 'The final aspect of the argument to the effect that Ireland has failed to properly transpose the directive stems from the requirement that the judicial review mandated by art.10a is to be free from excessive cost has not been met. It is important to note that this is the aspect of the directive that Kelly J. specifically determined could not be of direct effect on the grounds of lack of clarity. I see no reason to depart from that view.'.
AND In *Friends of The Curragh Environment v An Bord Pleanála* (And notice parties The Trustees of the Turf Club, Kildare County Council, Percy Podger and Associates, Geraldine MacCann) [2006] IEHC 243; Justice Kelly ruled, 'If I were to accede to this application I would have to be satisfied that the wording of the Directive has about it that clarity, precision and unconditionality so as to make it directly applicable. I am not convinced that it does.'.

[19] *McCoy v Shillelagh Quarries* [2015] IECA 28 *(McCoy (CA)).*

> 47 In the absence of EU rules governing the matter, it is for the domestic legal system of each Member State to lay down the detailed procedural rules governing actions for safeguarding rights which individuals derive from EU law, … .

In joined cases, *Stichting Natuur en Milieu* and *Vereniging Milieudefensie*[20], involving the applicability of 9(3) upon the EU institutions, the CJEU held that 9(3) was not directly applicable, because it was insufficiently precise. The CJEU said:

> With regard to Article 9(3) of the Aarhus Convention, that article does not contain any unconditional and sufficiently precise obligation capable of directly regulating the legal position of individuals and therefore does not meet those conditions. Since only members of the public who 'meet the criteria, if any, laid down in … national law' are entitled to exercise the rights provided for in Article 9(3), that provision is subject, in its implementation or effects, to the adoption of a subsequent measure....

As far as I'm aware, the CJEU has not yet ruled on whether any of the three EU directives (Directive 2011/92/EU art. 11(4), Directive 85/337 art.10a or Directive 96/61 art.15a) implementing some elements of the costs provision of Article 9(4) of Aarhus, has direct effect.

However, if Aarhus 9(3) is deemed to not have direct effect because of its reliance on the conditionality in Article (9)2 of Aarhus (that states must outline the criteria for recognition of ENGOs), then it appears that , by that doctrine, because all the actors who seek to rely on the procedures of access to justice outlined in Article 9(3) of Aarhus, and also seek to rely on the 'not prohibitively expensive' nature of the 9(3) procedures, and as those 9(3) procedures are foreordained as insufficiently precise, then so to would the prohibitive nature of the costs of those procedures. In other words, if 9(3) cannot escape being foreordained as being not sufficiently precise, notwithstanding that 9(3) itself is precise, and is only doomed because of its reliance on 9(2), then how can 9(4) (or the related EU directives) escape a similar fate?

In contrast, in the case of *Bund für Umwelt und Naturschutz Deutschland* (12 May 2011)[21], the Court states at paras:

> 56 The same is not true, however, of the provisions laid down in the last two sentences of the third paragraph of Article 10a of Directive 85/337.
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> 57 By providing that the interest of any non-governmental organisation meeting the requirements referred to in Article 1(2) of Directive 85/337 are to be deemed sufficient and that such organisations are also to be deemed to have rights capable of being impaired, those provisions lay down rules which are precise and not subject to other conditions.

Article 1(2) of the Directive states, ' "the public" means: one or more natural or legal persons and, in accordance with national legislation or practice, their associations, organisations or groups; …'

Hence, even though, Article 1(2)[22] attaches a similar conditionality to Article (9)2 of Aarhus, being that standing be 'in accordance with national legislation or practice', as opposed to 'according to criteria', a different conclusion is reached by the CJEU. It held that NGOs 'can derive from the last sentence of

[20] Joined cases C-404/12 P and C-405/12 P *Council* v *Stichting Natuur en Milieu and Milieu and Pesticide Action Network Europe* [2015] CJEU ECLI:EU:C:2015:5, para 47;
[21] C-115/09 *Bund für Umwelt und Naturschutz Deutschland, Landesverband Nordrhein-Westfalen eV v Bezirksregierung Arnsberg* (intervening party: Trianel Kohlekraftwerk Lünen GmbH & Co. KG), 12 May 2011.
[22] Article 1(2) of Directive 85/337/EEC.

the third paragraph of Article 10a of Directive 85/337 a right to rely before the courts' and are thus afforded the benefit of direct effect.[23]

In other words, the CJEU analysis of direct effect appears not wholly consistent. I outline this issue above, to illustrate the risk involved in a state seeking to rely on the direct effect doctrine to substitute its requirement to transpose EU directives. I contend that such a means of seeking to indirectly "accept" some aspects of the Aarhus convention, does not meet the requirement in Article 3(1) of Aarhus to, 'establish and maintain a clear, transparent and consistent framework to implement the provisions of this Convention.'.

The uncertainty of the reach of the costs provisions of EU directives, renders any conclusions of the CJEU in NEPP to be of limited application, in terms of the range of cases encompassed. I have to submit that such a means of transposition sits on such a flaky foundation, which may be undermined at any time, by a court decision that the costs provisions of the directives do not have direct effect, at all, that the ACCC should not await any decision from the CJEU as a means of assessing the level of compliance by Ireland with the convention.

Even if the CJEU resolved, the "catch 22" issue, the *McCallig* question, and the legitimacy of the three uncertainties, the application of any "catch 22" principles or the *McCallig* question outcome will inevitably be restricted by the default costs rules in Ireland, as affirmed in the recent *Sweetman* case.[24] The three uncertainties, even if resolved in a positive light, can only apply to an *Edwards* costs evaluation approach, at best, and cannot generate a 'hybrid' set of rules, based on an alteration of national law. My understanding is that, national rules apply, unless national rules provide a level of costs protection that falls below that which would be provided by application of the *Edwards* criteria.

It should also be noted that question 6 refers to, 'whether it is open to a member state to provide in legislation for exceptions to the rule'; this leaves open the question as to whether common law rules could provide for exceptions. Could the common law concepts of 'frivolous or vexatious' or 'contempt of court' or 'abuse of process' still apply to the application of *Edwards* criteria, even where the legislative costs provisions are not engaged?

All of the potential answers, as I understand it, can also only apply to state emanations, which would leave 95% of cases subject to all of the costs problems which I have outlined in my communication.

## CJEU Guidance generally

The CJEU may not be best positioned to tease out the principles in contest in my communication, particularly the "catch 22" conundrum. The CJEU is inclined to only outline the general principles by which national rules should be interpreted. In this case, it will only by accident, that it might expound on principles that might overlap with the "catch 22" issue. In *LZ*, the CJEU stated that, 'it is for the domestic legal system of each Member State to lay down the detailed procedural rules…'.[25] This makes such an accident even less probable.

[23] Para 59 of *Bund für Umwelt* (n 21).
[24] *Sweetman* (n 8).
[25] *LZ* (n 7).

## Conclusion

If one were to outline principles for a committee, such as the ACCC, to await a decision of a court to assist an assessment of compliance, one might formulate the following questions to be assessed:

1. How closely and clearly does the question raised overlap with the questions before the Committee?
2. How likely is it that that question will be answered?
3. How long might the delay be expected to be?
4. In international law terms, how uncertain is the answer to the question raised?
5. Can the answer likely given be expected to significantly dispose of the question before the Committee?

The answers to all of the above questions appear to not weigh in favour of a delay. I have to therefore submit that it would be preferable that the ACCC should not await the ruling of the CJEU in the NEPP case and the subsequent application of the CJEU ruling by the Irish courts, for the above reasons. Alternatively, the ACCC could adopt the approach which it took in the case of the C32 (ClientEarth) communication, and carve-out a particular issue, such as the *McCallig* question, to alone await the CJEU decision. The "catch 22" issue is such a logjam to Ireland's compliance, that it would preferably be dealt with in any 'Part 1' decision of the ACCC. Given the extensive work already undertaken by the ACCC on this issue, it may be better for the ACCC to conclude its work on this issue and enable its findings to be considered by the Advocate General in the NEPP case.

Kieran Fitzpatrick – 28th November 2016

Abbreviations used throughout reply:

ACCC = Aarhus Convention Compliance Committee
HC = High Court
2011 Act = Environment (Miscellaneous Provisions) Act, 2011
S.50B = Section 50B of the Planning and Development Act (2000), as amended (2010).
SC = Supreme Court

Some web-links are embedded. Any **emphasis** is mine.

**List of cases referenced; some are supplied as attachments** [Cases 14,15,16 &17 are on file]:

1) *North East Pylon Pressure Campaign Limited & Maura Sheehy v An Bord Pleanála & The Minister for Communications, Energy and Natural Resources, Ireland & The Attorney General & Eirgrid PLC* (No. 2) [2016] IEHC 490
2) *North East Pylon Pressure Campaign v An Bord Pleanála* [2016](No.1)IEHC 300 (12/05/2016).
3) C-470/16 *North East Pylon Pressure Campaign and Sheehy* ECLI:EU:C:2016:736 (29/09/2016).
4) Case C-188/89 *Foster v British Gas* [1990]
5) Case C-240/09 *Lesoochranárske Zoskupenie v Slovakia* [2011] CJEU ECLI:EU:C:2011:125.
6) *Sweetman v Shell* [2016] IESC 58, 17/10/2016.
7) C-657/13 *Verder LabTec v Finanzamt Hilden*, CJEU, 21 May 2015.
8) Case C-156/15 *Private Equity Insurance Group v Swedbank*, CJEU, 10 November 2016.
9) *Friends of The Curragh Environment v An Bord Pleanála* (And notice parties The Trustees of the Turf Club, Kildare County Council, Percy Podger, Geraldine MacCann) [2006] IEHC 243
10) *Sweetman v An Bord Pleanála, Ireland and the Attorney General and Clare County Council (Notice Party)* [2007] IEHC 153.
11) Joined cases C-404/12 P and C-405/12 P *Council* v *Stichting Natuur en Milieu and Milieu and Pesticide Action Network Europe* [2015] CJEU ECLI:EU:C:2015:5 (13 January 2015).
12) C-115/09 *Bund für Umwelt und Naturschutz Deutschland, Landesverband Nordrhein-Westfalen eV v Bezirksregierung Arnsberg* (intervening party: Trianel Kohlekraftwerk Lünen GmbH & Co. KG), 12 May 2011.
13) *Nowak v Data Protection Commissioner* [2012] IEHC 449.
14) *Edwards/ Pallikaropoulos v Environmental Agency (U.K.) Case C-260/11 CJEU [2013], decision of (4th Chamber) on 11th April 2013 (Annex 17; supplied with 17 December 2014 clarification).*
15) *McCallig v An Bord Pleanála [2014] IEHC 353 (Annex 29; see-17 December 2014 clarification).*
16) *Nowak v Data Comm. [2016] IESC 18 (28 April 2016) (See Annex 8 of reply of 9 June 2016).*
17) *McCoy v Shillelagh Quarries [2015] IECA 28 (McCoy (CA)). (Annex 3 of reply of 9 June 2016).*

**EU Directives implementing part of the costs provisions of Aarhus 9(4) – Web-links:**

Directive 2011/92/EU (art.11(4)) -

http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2012:026:0001:0021:En:PDF

Directive 2003/35/EC -

http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32003L0035

Directive 85/337/EEC is amended by art.10a Directive 2003/35/EC

Directive 96/61/EC is amended by art.15a Directive 2003/35/EC