THE HIGH COURT

[2015 No. 673 J.R.]

BETWEEN

MARTIN HARRINGTON, MAURA HARRINGTON,

MONICA MULLER AND PETER SWEETMAN

APPLICANTS

AND

THE ENVIRONMENTAL PROTECTION AGENCY AND IRELAND

AND THE ATTORNEY GENERAL

RESPONDENTS

AND

SHELL E. & P. IRELAND LIMITED

NOTICE PARTY

JUDGMENT of Mr. Justice Binchy delivered on the 21st day of November, 2017

1. By these proceedings, the applicants seek to challenge the decision of the first named respondent, the Environmental Protection Agency (the "EPA") dated 8th October, 2015 to grant the notice party a revised industrial emissions licence (hereinafter: the "Revised Licence") to the notice party, Shell E. & P. Ireland Limited (hereinafter: "SEPIL"). The Revised licence was issued following a review of an existing licence, licence no. P0738-01, granted by the EPA to SEPIL in 2007 (hereinafter: "the 2007 licence"), which was amended in 2014.

2. Both the Revised Licence and the 2007 licence relate to specific activities being undertaken by SEPIL in connection with the Corrib Gas Field Development (hereinafter: "the project"). The project has acquired a degree of notoriety since its inception not least because of the opposition it has attracted from certain quarters over the years, including the applicants. In his affidavit grounding the statement of opposition to these proceedings on behalf of SEPIL, Mr. Gerry Costello describes the Project as being divided into four distinct but inter-related and inter-dependent elements:-

> (i) offshore seabed installation (sub-sea wellheads and manifold at the gas field)
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> (ii) offshore gas pipeline (between wellheads and land fall)
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> (iii) on shore gas pipeline (between landfall and gas terminal at Bellanaboy Bridge and
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> (iv) Bellanaboy Bridge gas terminal.

3. The project has already been the subject no less than eleven consents or licences (including the Revised Licence and 2007 licence) and in his affidavit, Mr. Costello states that he does not know of any other project in the history of the State that has been subjected to so many environmental impact assessments (hereinafter: "EIAs"). These consents include, *inter alia*, a petroleum lease granted to SEPIL by the Minister for the Marine and Natural Resources on 15th November, 2001, a plan of development approval granted by the same Minister on 15th April, 2002, a foreshore licence granted by the Minister for the Marine and Natural Resources on 17th May, 2002, a terminal planning permission granted by An Bord Pleanála on 22nd October, 2004, a number of pipeline consents to allow for the transmission of gas from wellhead to land and from there to the terminal and from the terminal to connect to the Mayo to Galway gas pipeline, waste licences (also from the EPA) as well of course as the 2007 licence and the Revised Licence.

4. The 2007 licence was granted as an integrated pollution prevention and control licence, also known as an "IPPC" licence pursuant to a Directive of the same name (Directive 96/61/EC: the IPPC Directive). The 2007 licence was the subject of a review which resulted in the issue of a revised licence on 5th June, 2013, but that licence was quashed, by consent, on 15th October, 2013 in judicial review proceedings taken by the first named applicant. The 2007 licence was then subject to examination by the EPA pursuant to the terms of s. 82A(8) of the Environmental Protection Agency Act 1992 – 2013 , as inserted by Article 8 of the EU (Industrial Emissions) Regulations 2013 (S.I. No. 138 of 2013) and on 6th January, 2014 the conditions thereof were amended to bring the 2007 licence into conformity with the Industrial Emissions Directive. Shortly afterwards, on 5th February, 2014, SEPIL applied to the EPA to review the 2007 licence in order to facilitate a number of changes to its operations (hereinafter: the "application"). In his affidavit, Mr. Costello states that the main changes are as follows:-

> (i) The relocation of a discharge point for treated produced water. This was required in order to implement an agreement entered into between SEPIL and an organisation representing the interests of local fishermen known as Iascairí Chois Chostá Iorrais Teoranta ("ICCIT") whereby the discharge point for treated produced water at the terminal was to be moved from a point located some 12.7km off shore to the Corrib Gas Field itself, a distance of 65km off shore.
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> (ii) Removal of the requirement for ambient monitoring of an outfall at Erris Head. This arose directly out of number 1 above.
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> (iii) An increase in the suspended solids emission limit value ("ELV") at emission point SW2 (storm water run-off) from 5mg/1 to 30mg/1.
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> (iv) An application to amend the 2007 licence to reflect the use of selective catalytic reduction in order to reduce NOx concentrations in exhausts from the power generation gas engines at the terminal. This had been agreed previously with the agency and this part of the application was to bring the licence into line with that agreement.
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> (v) Arising out of No. (iv) above it was necessary to apply for an emission limit value for ammonia in the emissions to

atmosphere from the power generator engines.

(vi) A new arrangement for surface and ground water drainage systems.

5. Although the application related only to the changes to the project identified above, the EPA did not restrict its consideration of the application, or the EIA that it conducted in respect of the same, to those changes only. Rather, it undertook an EIA in respect of all of the activities of SEPIL. This is recorded in the report of the technical committee of the EPA (hereinafter: the "TC") dated 24th September, 2015 which states:-

> "The TC notes that the EPA has already licensed the activity, and that this is merely a review of the licence to take account of the modifications to the activity, principally to alter the emission points. The agency has deemed it appropriate to conduct an EIA of the entire activity to satisfy itself in relation to the statutory criteria for the grant of a licence, and has assessed the interaction of effects insofar as they bear on the activity."

6. It is important nonetheless to bear in mind what the "activity" is for this purpose. Sections 82 and 82A of the Environmental Protection Agency Act 1992, as amended (hereinafter: the "EPA Act") provide that a person shall not carry on an "activity" unless a licence under Part IV of the Act has been granted in relation to the "activity". "Activity" is defined in s. 3(1) of the EPA Act as "any process, development or operation specified in the First Schedule and carried out in an installation".

7. "Installation" is defined in s. 3(1) of the EPA Act as meaning "a stationary technical unit or plant where the activity concerned referred to in the First Schedule is or will be carried on, and shall be deemed to include any directly associated activity, whether licensable under this Part or not, which has a technical connection with the first-mentioned activity and is carried out on the site of that activity".

8. So, it can be seen, that in licencing the activities at the gas terminal, the EPA also licences the emissions therefrom at the point where they enter the environment (all such activities I will hereinafter refer to as the "Activities"). These emissions include the emissions of treated produced water and storm water referred to above. The EPA is not concerned however with assessment of activities that fall outside the scope of the EPA Act, such as the granting of planning permission for infrastructure, which falls within the remit of the local planning authority or An Bord Pleanála, the grant of a Foreshore Licence which falls within the remit of the Minister for the Marine and Natural Resources or the grant of consent for the construction of a gas pipeline from Wellheads to Terminal, which also falls within the remit of the Minister for the Marine and Natural Resources. Other licences and consents relating to the project, referred to above, also fall within the jurisdiction of persons or agencies other than the EPA. This division of responsibilities amongst different agencies of the State is central to one of the grounds advanced by the applicants to impugn the Revised Licence i.e. that there has not been an Environment Impact Assessment (hereinafter: "EIA") carried out in accordance with the requirements of Council Directive 2011/92/EU (hereinafter: "the EIA Directive").

9. Following receipt of the application, the EPA notified the statutory notice parties including Mayo County Council, An Bord Pleanála, the Department of the Environment, Communities and Local Government, the Department of Communication, Energy and Natural Resources, and the Department of Arts, Heritage and the Gaeltacht. The EPA subsequently received submissions from each of those bodies and a further seven submissions from members of the public, including submissions from or on behalf of the third and fourth named applicants. The EPA appointed an Inspector, Ms. Jennifer Cope, (hereinafter: the "Inspector") to prepare a report on the application as well as the submissions received thereon, including those from or on behalf of the third and fourth named applicants. The Inspector considered that further information was required and requested same on five separate occasions. On 23rd March, 2015, the Inspector presented a report on the application to the EPA. The report included an appropriate assessment (hereinafter: the "Appropriate Assessment") of the potential effects of the activities to be licensed on 21 European sites for the purposes of Council Directive 92/43/EEC (hereinafter: "the Habitats Directive") and an Environmental Impact Assessment (EIA) of the likely significant direct and indirect effects of the proposed activities on the environment for the purposes of the EIA Directive, 2011/92/EU. The Inspector also prepared a draft proposed determination of the application.

10. On 13th April 2015, the EPA gave notification of a proposed determination of the application, in accordance with s. 87(2) of the EPA Act. The proposed determination took the form of a draft licence for which there was an objection period ending 10th May 2015. SEPIL made one objection to the proposed determination and there were also six third party objections to the same, including objections from or on behalf of all of the applicants. The TC considered the Inspector's report, the proposed determination and the objections, and prepared a report dated 24th September 2015, endorsing the EIA and the Appropriate Assessment , but subject to certain recommended amendments

11. Prior to concluding its own report, the TC , as part of its consideration of the Inspector's report, decided, in early August 2015, to commission an independent expert report to revisit the Appropriate Assessment, in order to ensure that the conclusions reached by the Inspector were correct. The independent expert report was conducted by a Ms. Aebhín Cawley of Scott Cawley Ltd (hereinafter: "the Scott Cawley Report")., and is also dated 24th September, 2015. The Scott Cawley Report accepted and endorsed the Inspector's conclusions in respect of the Appropriate Assessment.

12. At a meeting on 29th September, 2015, the EPA approved the recommendations of the TC and made a decision to grant the Revised Licence to the notice party. In respect of EIA, the EPA adopted the assessment contained in the Inspector's Report dated 23rd March, 2015 and the TC's report. The formal licence was drawn up and dated 8th October 2015. It is this decision that the applicant seeks to impugn in the within proceedings. The minutes of the EPA meeting of 29th September 2015 record as follows:-

> "The Inspector's report dated 23rd March, 2015 the Inspector's addendum reports and the technical committee report contain a fair and reasonable examination, evaluation and analysis of the likely effects of the licensed activities on the environment and adequately and accurately identify describe and assess those effects. The assessment in those documents is adopted as the environmental impact assessment of the agency. Having regard to this assessment, it is considered that the activities if managed, operated and controlled in accordance with the licence will not result in the contravention of any relevant environmental quality standards or cause environmental pollution."

13. As regards appropriate assessment for the purposes of the Habitats Directive, the EPA recorded that it considered that an appropriate assessment was required and confirmed that it had "completed the appropriate assessment of potential impacts" on a list of specified European sites and that it had "made certain, based on best scientific knowledge in the field and in accordance with the European Communities (Birds and Natural Habitats) Regulations 2011 and 2013 pursuant to Article 6(3) of the Habitats Directive, that the activities, individually or in combination with other plans and projects, will not adversely affect the integrity of any European site … having regard to their conservation objectives and will not affect the preservation of these sites at favourable conservation status if carried out in accordance with this licence and conditions attached thereto for the following reasons …". The EPA concluded that it

was "satisfied that no reasonable scientific doubt remains as to the absence of adverse effects on the integrity of those European sites identified in Table 1.0 above."

14. By order of 14th December, 2015, the applicants were granted leave, *ex parte,* to seek judicial review on a number of grounds. The applicants issued a notice of motion returnable for 2nd February, 2016 seeking the following reliefs:-

> (i) An order of *certiorari* quashing the decision of the respondent to grant a licence, 0738-03 subject to conditions, to the notice party in respect of an activity consisting of a gas refinery and large combustion plant at Bellanaboy Bridge, Bellagelly South, County Mayo.
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> (ii) A declaration that no Environmental Impact Assessment (EIA) sufficient to comply with requirements of 2011/92/EU (the Consolidated Environmental Impact Assessment Directive ("the Directive")) in respect of the development the subject matter of licence no.0738-03, which is the operation of a gas refinery and large combustion plant, associated pipe network including the pipe line conveying the raw gas from the wellhead and the pipe network connecting to the Bord Gáis Éireann network, which assessment must be carried out in order to comply with the requirements of the aforesaid Directive 2011/92/EU.
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> (iii) A declaration that both the first named respondent and the second named respondent were required and obliged to take all general or particular measures to remedy any past failure to carry out an assessment of the environmental impact and or effects of a project as provided for under the EIA Directive and take the appropriate necessary measures to ensure that in carrying out an EIA the requirements of Directive 2011/92 EU were complied with.
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> (iv) In the alternative, the second named respondent failed to transpose the requirements of Council Directive 2011/92/EU in failing to provide for appropriate procedures to ensure that the requirements of the EIA Directive are fully complied with and through a system of law has created a procedure where no integrated EIA is carried out in respect of those projects specified under the EIA Directive and in particular that the full effects of such developments including direct and indirect effects of a project in accordance with Articles 3,4 – 11 of the Directive on human beings, fauna and flora, soil water air climate and landscape, material assets and the cultural heritage and the interaction between these factors are carried out and to nullify the unlawful consequences of a breach of laws out of the principal of cooperation and good faith laid down in Article 10 EC (Articles 4(3)) of the Treaty of the European Union and filed to take appropriate measures necessary to remedy failure to carry out an EIA in respect of the while of the project the subject matter of licence 0738-03.
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> (v) An order requiring the respondents to take such steps so as to carry out an EIA in respect of the gas refinery at Bellanaboy Bridge gas terminal to include all the elements of the project and specifically the upstream gas pipeline conveying raw gas from the well head to the terminal, the gas distribution network conveying the treated gas in the pipeline specifically constructed for that purpose, the gas refinery and all associated plant and equipment, the waste water treatment pipe so as to accord with Articles 3 and 4-11 of the EIA Directive and in particular identify all likely significant effects both direct and indirect, the cumulative effects so as to fully comply with and have the project properly assessed pursuant to the requirements of that directive.
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> (vi) An order requiring production of all reports and or draft reports and or all other documents prepared by or on behalf of the first named respondent relating to or connected with the decision of the 8th October 2015 on licence 0738-03.
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> (vii) If necessary an order pursuant to Article 234 of the TEU for a referral to the European Court of Justice.

This motion was grounded upon an affidavit of Mr. Peter Sweetman, the fourth named applicant dated 2nd December, 2015.

15. Before continuing further I should mention at this juncture that the third and fourth named applicants had previously challenged a decision of An Bord Pleanála, dated 19th January, 2011 granting approval for the construction of an onshore pipeline associated with the project, and known as the Corrib Onshore Upstream Pipiline.. The respondents in those proceedings were An Bord Pleanála, Ireland, the Attorney General and the Minister for the Environment, Community and Local Government. Also in 2011, the third and fourth named applicants brought proceedings seeking to challenge three other consents associated with the project: firstly a consent issued by the Minister for Communications, Energy and Natural Resources, dated 25th February, 2011 (and known as the Plan of Development Addendum Approval) , secondly a consent issued by the same Minister on the same date consenting to the construction of a natural gas pipeline from Corrib sub-sea facilities to the terminal at Bellanaboy Bridge and thirdly a Foreshore Licence granted by the Minister for the Environment, Community and Local Government dated 22nd July, 2011. Both sets of proceedings were settled and written terms of settlement entered into between the parties on the 26th October, 2011 (the "settlement agreement"). Clause 5 of those written terms stated:-

> "The within terms of settlement are in full and final settlement of the subject matter of the above mentioned proceedings. The applicants agree not to litigate before the courts, or to make the subject of a complaint to the European Commission, the European Parliament, the Aarhus Convention Committee or any other international body any issue in respect of the above mentioned Consents, or any amendments thereof or modifications thereto. The applicants further agree and undertake not to procure, encourage or assist others to institute or pursue any legal proceedings (of whatever kind) seeking to challenge or otherwise question the validity of the Consents."

In their statements of opposition in these proceedings, the State Respondents contended that the third and fourth named applicants were precluded from issuing these proceedings by reason of the terms of the settlement agreement. On 2nd February, 2017, the first, third and fourth named applicants withdrew from the proceedings, and the legal representatives on record for all applicants came off record. Presumably the third and fourth named applicants withdrew because of difficulties arising by reason the terms of the settlement agreement. It is unclear as to why the first named applicant withdrew from the proceedings, but in any case the proceedings were continued and prosecuted by the second named applicant only, Ms. Maura Harrington. Ms. Harrington represented herself at the trial of the proceedings, having been refused an adjournment to instruct a new legal team. From this point onwards, I will therefore refer to the "applicant" rather than the "applicants", unless the context otherwise requires.

16. The applicant's statement of grounds is, regrettably, prolix, repetitious and at times both general and vague in character. Paragraphs E.20 to E.23 appear to be almost identical to paras. E.24 to E.34, the difference in paragraph numbers being accounted for by the subdivision of one of these paragraphs. This is especially regrettable given that the applicants had at the time the benefit of advice and assistance from both solicitors and counsel. The respondents attempted to address this in their respective statements of opposition by focusing on the specific issues raised by the applicants in their statement of grounds, and ignoring repetitious claims.

Also, helpfully, the respondents prepared an issues paper arising out of the pleadings (which had been agreed while all applicants were still parties to the proceedings and had the benefit of legal advice) and, to which the applicant confirmed her agreement on the first day of the hearing. Although it is tempting simply to proceed directly to the agreed issues , in order to put them in context I think it is desirable that I should first summarise the key issues raised by the applicants in their statement of grounds , and the responses of the respondents thereto in their respective statements of opposition.

Statement of Grounds and Statements of Opposition – a Summary
17. Paragraph E of the statement of grounds purports to be broken down into matters of fact and matters of law. Unfortunately however, very many of the matters falling under the heading of "matters of fact" are either matters of law or mixed matters of law and fact and the distinction as drawn in the statement of grounds is really of little use. Accordingly, I summarise the below the grounds relied upon by the applicants without reference to this distinction. For convenience, I will also set out underneath each ground a short summary of the response of the respondents as set out in their respective statements of opposition, distinguishing between the statements of opposition of the respondents only where necessary or appropriate. For the sake of clarity, I should say that the ground numbers below are my own, and not those appearing in the statement of grounds. This arises because I am summarising the latter.

18. Ground 1
No EIA was carried out in respect of the application as required by the EIA Directive. More specifically, no "integrated" EIA was carried out in respect of the project in its entirety, which considered the interaction of the effects of the whole of the project in accordance with the requirements of Article 3 of the EIA Directive which provides as follows:-

> "The Environmental Impact Assessment shall identify, describe and assess in an appropriate manner, in the light of each individual case, by the and indirect effects of a project on the following factors:-
>
> (a) population and human health;
>
> (b) biodiversity, with particular attention to species and habitats protected under Directive 92/43/EEC and Directive 2009/147/EC;
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> (c) land, soil, water, air and climate;
>
> (d) material assets, cultural heritage and the landscape;
>
> (e) the interaction between the factors referred to in Points (a) to (d)."

19. Ground 1:Response of The First Respondent

> (a) The EPA states that it did carry out an EIA of the likely significant direct and indirect effects of the proposed activities - the operation of the gas refinery and combustion of fuels – on the environment as respects matters that come within the functions of the agency. This included an assessment of the likely significant direct and indirect effects of the emissions from the Activities, including emissions, through a pipe referred to as the services umbilical pipe and an outfall pipe each of which runs alongside the incoming gas pipeline. The assessment incorporated the potential effects of the Activities on the overall Corrib Gas Field Project and the potential effects of the overall Corrib Gas Field Project on the Activities. The EPA denies that the EIA Directive requires the EPA or any other single competent authority to carry out a single global or "integrated" EIA in respect of the project.
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> (b) The EPA says that Article 2 (2) of the EIA Directive expressly provides that EIA may be integrated into existing procedures for development consents for projects in Member States, and Article 2 (3) provides that Member States may provide for coordinated procedures and/or joint procedures in respect of projects for which the obligation to carry out assessments of the effects on the environment arise simultaneously under more than one European Directive. The EPA states that it consulted with other competent authorities involved in determining the application, and had before it material, in particular EIAs which were before those other competent authorities, and had regard to that material in adjudicating upon the application. Furthermore, the Inspector requested and received, and considered and assessed additional data from SEPIL in relation to the question of "cumulative and interactive impacts of the activities, including the effects associated with the Mayo to Galway gas pipeline and connection to the national electricity grid".
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> (c) The EPA states that the applicants have failed to identify and particularise any "interaction of the effects of the whole of the project" or "cumulative effects" which ought to have been, but were not, assessed. Finally, under this heading, the EPA said that in accordance with s. 83 (2A) of the EPA Act the EPA has the statutory power to carry out an EIA only as respects the matters that come within the functions of the EPA.

20. Ground 1: Response of the State Respondents
The State respondents quite correctly leave it to the EPA to respond to those parts of the applicant's claim that are concerned with allegations that the Activities have not been assessed in accordance with the EIA Directive. The State respondents claim that the term "integrated assessment" does not appear in the EIA Directive and deny that there is any requirement that a single EIA be carried out by a single competent authority. Moreover, the State Respondents plead that such a claim is inconsistent with the judgment of the Supreme Court in *Martin v. An Bord Pleanála* [2008] I.R. 336, and with the judgment of the Court of Justice of the European Union in the case of *Commission v Ireland*, *(Case C-50/09)* [2011] ECLI:EU:C:2011:109 each of which acknowledge that the task of conducting EIA may be spread across such agencies as the State considers appropriate.

21. Ground 1: Response of SEPIL
SEPIL, too denies that an EIA, compliant with the EIA Directive, has not been carried out. It also states that there is no requirement under the EIA Directive or national law that an EIA in respect of a project to be carried out by one competent authority. It states that the EIAs carried out by the various competent authorities in respect of the project considered the cumulative impacts and interactions of effects as is required under Article 3 of the EIA Directive. It says that the applicants have not identified any factor or effect which should have been, but which was not considered, by the EPA as part of its EIA.

22. Ground 2
The applicant claims that there have been significant changes to the project over the years such that the installation as now

constructed is materially different to that which was the subject matter of earlier "purported" assessments, and there has been no attempt to reconcile the intervening changes in the project since the carrying out of these assessments. In this regard the applicant refers to and relies upon, amongst other things, alterations to the gas pipelines, both onshore and offshore and alleges that the impacts of these changes have never been appropriately or properly assessed in accordance with the Directive.

23. Ground 2: Response of the EPA
The EPA accepts that there have been changes to the gas pipelines and gas terminal as alleged by the applicants. However it denies that these changes have not been the subject of EIA, or that the said changes in any way affect or undermine the legality of the EIA carried out by the agency in relation to the application. The EPA states that its inspector, its technical committee and the EPA itself were aware of the changes and assessed the same, and relies upon the contents of the inspector's report and the report of the technical committee.

24. Ground 2:Response of State Respondents
The State respondents make a discrete submission in relation to part of the applicant's claim. Insofar as it relates to the plan of development dated 15th April, 2002 the State authorities say that any challenge to changes in that plan (and such changes are not properly particularised in the statement of grounds) is inadmissible in circumstances where the time limit for any such challenge has long since expired. In any event, the State authorities say that any such changes were authorised pursuant to the requirement of the relevant consent authorities and the EIA Directive.

25. Ground 2: Response of SEPIL
SEPIL admits that there have been changes to the route of the gas pipeline and the terminal design as claimed by the applicant. However, it pleads that these changes are referred to by the Inspector in her report stated 23rd March, 2015 and accordingly the EPA was aware of the same. Furthermore, all changes to the gas pipeline, both onshore and offshore, have been the subject of EIA.

26. Ground 3
All assessments carried out in respect of the project whether by the EPA, An Bord Pleanála, the Department of Communications, Energy and Natural Resources or the Department of Environment, Community and Local Government predate the decision of the European Court of Justice in the case of *Commission v. Ireland, Case C-50/09* which was handed down on 3rd March, 2011. In particular, it is alleged that the State Respondents have failed to consider properly the judgment of Court of Justice of the European Union in *Case C-50/09* and to take appropriate measures arising out of that judgment. It is claimed that the second named respondent has erred in law in enacting the legislation that it did in light of that judgment, and in particular by assigning the function of carrying out an EIA in respect of the project to a body (the EPA) which has neither the competence nor capacity to carry out an EIA in accordance with the EIA Directive in respect of the project. It is claimed that the effect of *Case C-50/09* was that "the previous considerations grounding Environmental Impact Assessments was (sic) contrary to European Community law" and the second named respondent had a duty to ensure that the resulting lacuna was rectified in any subsequent EIA carried out in respect of the project. While not stating as much clearly, the applicant appears to be contending in her statement of grounds that by reason of the decision in *Case C-50/09*, earlier EIAs in respect of the project are flawed, and that the EPA should have , in the context of the application, undertaken an EIA of the entirety of the Corrib Gas Field Development, and all activities being conducted there, and not one limited to the Activities.

27. Ground 3:Response of Respondents
The applicant's interpretation of *Case C-50/09* is erroneous. That case identified a lacuna in the Irish domestic legislation transposing the EIA Directive, such that it was in theory possible that the EPA might be obliged to give decisions on applications without the benefit of an EIA, as it did not have power to require applicants to deliver an environmental impact statement ("EIS") with applications for licences or consents. This was theoretical because it never in fact occurred, as applicants invariably had to produce an EIS for the planning authority, which would also be submitted to the EPA. The CJEU noted that the Irish courts had interpreted and applied the domestic legislation in a manner consistent with the requirements of the EIA Directive. In any case the lacuna identified by the CJEU had been closed off through the introduction of amending legislation which applied to the application. The CJEU did not hold or suggest, as the applicant contends, that all EIAs conducted in Ireland prior to the amending legislation were in some way flawed or invalid. Insofar as the applicant claims that all prior assessments of the project were flawed by reason of the decision of the CJEU in *Case C-50/09,* that is an erroneous interpretation of the decision of the CJEU in that case. Moreover, this amounts to an impermissible collateral attack on earlier consents, the time for challenging which has long since expired.

28. Ground 4
The EPA confined its consideration of the application to those matters that came within its functions only, and in doing so it failed to carry out an EIA of the project as a whole, and failed to consider the direct and indirect effects and the cumulative effects of the project on human beings, flora, fauna, soil, water, air, climate, landscape, material assets and cultural heritage and failed to identify mitigation measures in respect of any adverse effects of the project.

29. Ground 4 : Response of EPA
The EPA does not have statutory jurisdiction to grant development consent in respect of any "project" beyond the Activities, which are the activities with which the application is concerned, and to which the Revised Licence applies. The application was subjected to an EIA in respect of those matters coming within the functions of the EPA i.e. those matters to which the application relates that are likely to have significant effects on the environment. The EPA carried out an EIA of the likely significant direct and indirect effect of the proposed activities, and this included an assessment of the likely significant effects , direct and indirect of the emissions from the Activities, including the emissions from the services umbilical pipe and the outfall pipe running alongside the incoming gas pipeline. Insofar as the applicant contends that the EPA should have carried out a broader EIA than that which it conducted, or that it should have conducted an EIA of activities other than the Activities, the same would have been *ultra vires* the powers of the EPA.

30. Ground 5
The EPA is required to follow a procedure which excludes from its consideration a range of matters and how those matters would interact with matters within the jurisdiction of the agency. Accordingly the EPA could not have carried out any EIA that complied with the requirements of the Directive by virtue of the scale and extent of matters excluded from its consideration.

31. Ground 5: Response of EPA
Article 2(2) of the EIA Directive expressly provides that EIA may be integrated into existing procedures for development consents for projects in Member States, and article 2(3) provides that Member States may provide for co-ordinated procedures and/or joint procedures in respect of projects for which the obligation to carry out assessments of the effects on the environment arise simultaneously under more than one European Directive. The State has integrated the requirement to carry out EIA into the domestic procedures under, *inter alia*, the Planning Acts, the Foreshore Act and the EPA Act. The EIA Directive does not prohibit Member States from involving more than one competent authority in the decision to grant development consent. The EPA consulted with other

competent authorities involved in determining applications for development consent in respect of other aspects of the project, and had before it material – in particular, environmental impact statements – which was before those other competent authorities as well as documents evidencing the assessments and decisions of those authorities. The EPA had regard to that material and to the assessments previously carried out by, and observations of, these other competent authorities, and integrated same into its assessment of the environmental impacts of the Activities . The Inspector requested, received, considered and assessed additional data from SEPIL in relation to the question of "cumulative and interactive impacts of the Activities, including effects associated with the Mayo to Galway gas pipeline and connection to the national electricity grid". Accordingly, the direct and indirect effects and the cumulative effects of the project on human beings, flora, fauna, soil, water, air, climate, landscape, material assets and cultural heritage were fully assessed in compliance with the requirements of the EIA Directive.

32. Ground 5: Response of State Respondents
It is denied that there has been any failure to comply with the EIA Directive or that the interaction of effects and cumulative effects of what the applicants mistakenly characterise as a 'project' could never have been considered. The EPA had the power to and did exercise the power to consult with other competent authorities in relation to impacts that were considered by them individually in granting the various previous consents. The EPA took account of the responses to these consultations in its decision to grant the Revised Licence. Therefore it cannot be said that the system of law created has failed to allow for the interaction of effects and cumulative effects of the project or the Activities, or that the competent authorities have somehow failed to coordinate the assessment of the effects of the whole of the Corrib gas field project.

33. Ground 5 : Response of SEPIL
The applicant has not identified the matters which it is claimed the EPA excluded from its consideration or which were not properly assessed. The EPA identified, described and assessed the likely significant effect, both direct and indirect, of the carrying on of the Activities on human beings, fauna and flora, soil, water, air, climate, landscape, material assets, cultural heritage and the interaction between the other factors as is required under the EIA Directive.

34. Ground 6.
The report of the technical committee of the EPA does not amount to a EIA. The minutes of the meeting of the EPA of 29th September, 2015 do not amount to an EIA. At its meeting of 29th September, 2015, the EPA limited itself to a consideration of the proposed determination of 13th April, 2015, the first party objection, second and third party objections, one submission and objections made and the report and recommendations of the technical committee dated 24th September, 2015. The consideration of that documentation only was not sufficient to constitute an EIA.

35. Ground 6 : Response of Respondents
It is not claimed that any one of the documents referred to constitutes the EIA of the EPA. No single document constitutes an EIA – this is a misunderstanding of the concept of EIA. It is clear from the minutes of the EPA meeting of 29th September, 2015 that the EPA adopted as its EIA the assessment conducted by the Inspector as reflected in her report of 23rd March, 2015 and her addendum reports as well as the assessment of the TC as reflected in its report.

36. Ground 7
The activities to which the 2007 licence refers had not commenced within the period required s. 92(1) of the EPA Act and the 2007 Licence itself. Accordingly, the 2007 Licence had expired by the time of determination of the application and the decision to grant the |Revised Licence on 8th October 2015. and there was therefore no licence to review on that date.

37. Ground 7: Response of Respondents
By letter dated 26th September, 2014, SEPIL informed the EPA that it intended to commence operation of the Activities on 1st November, 2014. By further letter dated 11th November, 2014, SEPIL advised that operations had commenced at the installation. As a matter of fact therefore, operations had commenced within the required period of seven years from the date of issue of the 2007 licence. As a matter of law, s. 92(1) of the EPA Act provides:-

> "Where in the opinion of the Agency, the carrying on of the activity to which a licence or revised licence relates has not been substantially commenced within the period of 3 years beginning on the date on which the licence was granted or, as may be appropriate, the period referred to in paragraph (a) or (b) of subsection (2), and the Agency notifies the licence of that opinion, then that licence shall cease to have effect on the giving of that notice."

Paras. (a) and (b) of s. 92(2) enable the EPA to prescribe a licence duration of more than three years. In this case the EPA had prescribed a period of seven years beginning on the date of issue of the 2007 Licence. The Agency did not serve any notice pursuant to s. 92(1) of the EPA Act. This is a prerequisite to the operation of s. 92(1) and accordingly as a matter of law the licence did not cease to have effect at any time.

38. Ground 7: Response of Respondents
The EPA failed to carry out an appropriate assessment of the application in accordance with the requirements formulated by the High Court in the case of *Kelly v. An Bord Pleanála* [2014] IEHC 400. Furthermore, the appropriate assessment that was carried out by the EPA was extremely limited because the EPA excluded consideration of the effects of significant parts of the project, contrary to the test set out in *Kelly*.

39. Ground 7: Response of EPA and SEPIL
The applicant has made a general plea that the EPA did not conduct an appropriate assessment in accordance with the requirements of the Habitats Directive and the decision of this Court in *Kelly v. An Bord Pleanála*. The applicant has provided just one particular of this allegation. This is that no reason or no adequate reason has been given for the increase in ELV of the storm water to be discharged at Reference Point SW2, a drain which discharges into Carrowmore Lake. The statement of grounds refers to Carrowmore Lake as being the "relevant European site" for the purposes of the Habitats Directive, but does not clarify whether it is referring to the Carrowmore Lake complex, which is a special area of conservation ("SAC") or the Carrowmore Lake special protection area ("SPA"). In either case the protection afforded by the designation is terrestrial and not aquatic. The EPA established, as part of its appropriate assessment, that the increase in ELV sought by SEPIL in the application will not have a detrimental effect on the water quality of Carrowmore Lake, and will not adversely affect the integrity of either European site, namely Carrowmore Lake complex SAC or Carrowmore Lake SPA. The Agency arrived at this conclusion having due regard to the Habitats Directive and the test identified by this Court in *Kelly v. An Bord Pleanála* and in particular by reference to best available technology. In the Appropriate Assessment ,the Inspector noted that the "storm water drainage system includes an emergency holding tank upstream of the settlement ponds which can be isolated in the event of hydrocarbon contamination, to prevent the exceedance of environmental quality standards in the receiving water" and that her recommended determination "requires the licensee to meet the emission limit values set out for SW1, SW2 and SW3, to ensure that the discharges will not negatively impact water quality and ensure the continued protection of water

dependent protected species". In the minutes recording the decision of the EPA, there is express reference to this emergency holding tank and the fact that the licence requires the licensee to meet the ELVs designed to ensure that the discharge will not negatively impact water quality. Furthermore, the assessment of whether a particular ELV is appropriate to ensure the absence of any adverse effect on the integrity of the European site is a matter within the discretion and technical expertise and competence of the EPA, a specialist body established by statute, and is subject only to limited review by the court on the grounds of unreasonableness or irrationality.

40. Ground 8
Had the appropriate test set out in *Kelly* and the Habitats Directive been applied, the respondent would not have increased the ELV at discharge point SW2, and there was no basis for doing so.

41: Ground 8: Response of EPA and SEPIL
The appropriate test in *Kelly* and in the Habitats Directive was applied, and the EPA concluded on the basis of the assessment set out in the Inspector's report that it was safe to increase the ELV at Discharge Point SW2.

42. Ground 9
The independent expert report obtained by the EPA for the purpose of appropriate assessment, from Scott Cawley was only received on the same day as the technical committee finalised its report, and accordingly the technical committee could not have considered the same until after it had already arrived at its conclusions.

43. It should be noted that the applicant in her submissions withdrew any objection to the fact that the Scott Cawley Report was received on the same day that the technical committee finalised its report. Accordingly, this point does not require further consideration.

44. Ground 10
The applicants should have been afforded an opportunity to review and comment upon the Scott Cawley Report before the EPA arrived at its determination of the application. This is a matter of fair procedures, and should be considered in light of the obligation of the decision making authority to consult with the public, under the Habitats Directive, the EIA Directive and the Aarhus Convention.

45. Ground 10: Response of EPA and SEPIL
This complaint misunderstands the nature and purpose of the report. It was an independent, expert report, commissioned by the EPA to assist it in reaching a determination for the purposes of the Habitats Directive. The report was procured by the TC in light of objections made to the proposed determination. Ms. Cawley was acting as the agent of the EPA, and just as there is no requirement whether pursuant to the principles of fair procedures and natural and constitutional justice, the Habitats Directive, the EIA Directive and/or the Aarhus Convention, to circulate the TC's report to the parties to the application, there was no obligation on the Agency to circulate the Scott Cawley Report.

46. Ground 11
It is alleged against the second named respondent specifically that it has failed to transpose the requirements of the EIA Directive in failing to provide for appropriate procedures to ensure that the requirements of the EIA Directive are fully complied with and through a system of law has created a procedure where no integrated EIA is carried out in respect of projects specified under the EIA Directive by and in particular has failed to take appropriate measures necessary to remedy the alleged failure to carry out an EIA in respect of the whole of the project.

47. Ground 12: Response of Respondents
Each of the respondents deny that there is any obligation to conduct an "integrated" EIA in respect of projects to which the EIA Directive applies. This point is dealt with in paras 19-21 above.

48. The Agreed Issues
The following are the issues which the parties have agreed arise for determination arising out of the pleadings:-

(i) (a) Was there an EIA carried out in accordance with the requirements of the EIA Directive?

(b) Was there an EIA carried out for the purposes of domestic law?

(ii) Was the approach adopted by the EPA consistent with the judgment of the Court of Justice of the European Union in *Case C-50/09*? What impact, if any, did *Case C-50/09* have upon earlier assessments carried out by the EPA and others in relation to the project?

(iii) Did the EPA carry out an appropriate assessment in accordance with the Habitats Directive?

(iv) Has there been a failure to give reasons in accordance with ground 12, as claimed by the applicant? This is a reference to the increase in ELVs at reference point SW2, permitted by the terms of the Revised Licence.

(v) Can a licence which has expired and which was not in existence be the subject of a review? It may be observed that this question is not correctly expressed because the respondents do not accept that the 2007 licence had expired as alleged by the applicant.

(vi) In the event that the answer to question 1 (b) is in the affirmative, is the applicant's claim in respect of transposition inadmissible by reason of the applicant's failure to provide proper particulars as to the alleged shortcomings in national law? If it is admissible, have the requirements of the EIA Directive been appropriately transposed?

(vii) Does the settlement agreement operate as to disentitle or prevent these proceedings against the state respondents and/or the EPA from being heard and determined, in whole or in part? The respondents abandoned this as an issue in the proceedings in recognition of the fact that Ms. Harrington was not a party to the proceedings that gave rise to the 2011 settlement.

(viii) Does the applicants' failure to disclose the existence of the earlier proceedings and of the settlement agreement in their application for leave to apply for judicial review amount to a breach of the applicants' duty of disclosure such as to disentitle the applicants to any relief? This question was framed when the first, third and fourth named applicants remained parties to the proceedings. While Ms. Harrington was not a party to the 2011 settlement or the proceedings

that gave rise to the same, nonetheless the respondents kept this matter in issue on the basis that she should nonetheless have ensured that the 2011 settlement was disclosed to the court at the time of granting of leave.

49. I turn now to address each of these issues in turn, first by setting the submissions of the applicant and thereafter setting out the submissions of the respondents. Where the respondents are concerned however, unless otherwise indicated, I will treat their position on each issue as one because there was really no disagreement between the respondents on any of the issues, although some of them were obviously more engaged with some of the issues than with others. Having summarised the position of the parties as regards each issue, I will set out immediately thereafter my decision on each issue.

50. As regards the applicant's submissions, it is only fair to say that she was at some considerable disadvantage in the preparation of the same. It was only a little bit more than a week before the commencement date of the hearing that she found herself without a legal team, following the withdrawal of the other applicants from the proceedings. While she did seek an adjournment of the hearing in order to enable her to instruct other legal advisors, this application was apparently opposed by the respondents and the application for an adjournment refused. Inevitably therefore the submissions of the applicant are not anything like as focused on the issues paper as they would be had she had legal advice although I have considered her written submissions carefully. Similarly, her oral submissions at the conclusion of the hearing were lacking in focus. However, I will reflect here as best I can the submissions made by the applicant in relation to each of the issues, and where there is no clear submission on an issue I will address it by reference to the reasons given in the statement of grounds, and the grounding affidavit of Mr. Sweetman.

First Issue

(I) (a) Was there an Environmental Impact Assessment carried out in accordance with the requirements of Council Directive 2011/92/EU?

51. The first issue identified by the applicant in her submissions under this heading is that the EPA did not properly comply with the letter or the spirit of the EIA Directive or the Habitats Directive in its consideration of emissions via "cold venting". She said that she can find no reference to or any evidence of assessment of this emission. She says that so far as she was aware, the issue of cold venting was not mentioned at all until it appeared as an addendum to an EIS which was produced during an oral hearing on application P0738-01.

52. This is the most specific allegation made by the applicant, and while made in her written submissions, is not mentioned in the statement of grounds or in the grounding affidavit of Mr. Sweetman. Accordingly there is no response to this issue in the pleadings of the respondents and it is not properly a matter before the court in the proceedings. However, I do note that the issue is addressed by the Inspector in her report, at page 20 where she states (under a heading "Flaring and venting of natural gas") : "It is estimated that 29.65 tonnes/year of natural gas will be lost by direct releases to air (cold venting)which is a reduction from 95 tonnes/year previously estimated in the licence application for P0738-01. The potential impacts on air quality were assessed as part of the air dispersion model study. There is no significant change to this aspect of the installation since first licensing". This makes it clear therefore that the issue of cold venting was assessed as part of the EIA conducted into the 2007 licence application, and was again considered by the Inspector in the context of the application, where she notes a reduction in the estimated annual releases of natural gas to air.

53. The applicant in her submissions also appears to make the case that material changes to parts of the project as originally licensed or permitted have not been subjected to EIA at any time. This point is also advanced by Mr. Sweetman in his affidavit in which he avers that there have been changes of significance to the project as originally approved for example, in the location of pipelines, treatment and processes and the location of the terminal itself, none of which have been subject to EIA. And of course this point is made in the applicant's statement of grounds.

54. More generally, Ms. Harrington appears to contend, as does Mr. Sweetman, and as is pleaded in the statement of grounds, that the entire project should be the subject of a single, integrated assessment. In her written submissions the applicant said that she does not believe that "such a complex interconnected project as the Shell/Corrib project can, in its totality be deemed to be assessable through a sequential series of formulaic quantitative exercises". Mr. Sweetman in his affidavit states that:-

> "The critical issue at the heart of my objection and the submissions of my co-applicants, is the failure of any one authority to have carried out an Environmental Impact Assessment in accordance with the requirements of the Environmental Impact Assessment Directive and the entire approach of the submissions made to the Agency sought to urge the Agency now that it was seized of the application to carry out such an assessment which would for once comply with the requirements of the Environmental Impact Assessment Directive".

Mr. Sweetman makes this point repeatedly in his affidavit. He also makes the point that by limiting the EIA to emissions only, the EPA did not consider indirect and cumulative effects of the project on the environment. He submits in his affidavit that what was required was an assessment of the entirety of the project and not just one limited to a consideration of emissions. He argues that no adequate EIA has been carried out because the project has been artificially divided into a number of elements, each which was the subject of a separate consent procedure, and that this process undermined the very essence of EIA. The applicant invited the Court to make a reference to the Court of Justice of the European Union on this issue.

Response of the Respondents

55. The respondents submit that there is no requirement or obligation to conduct a single "integrated" assessment of the project. It is submitted that this is made very clear in the decision of the Supreme Court in *Martin v. An Bord Pleanála* [2008] 1 I.R. 336 in which the Supreme Court stated at paras. 100 to104:-

> "100 The applicant contends that by virtue of the statutory division of responsibilities between the Board and the EPA it is not possible for an "integrated assessment" of the effects of the project on the environment to take place as required by the Directive. There is a deficiency in the process, he submits, because no one body carries out a global assessment.
>
> 101. As previously mentioned Article 3 of the Directive requires the EIA to be carried out so as to take into account the direct and indirect effects of a project on specified environmental factors which are:-
>
> "- human beings, fauna and flora;
>
> - soil, water, air, climate and the landscape;

- material assets and cultural heritage;

- the interaction between the factors mentioned in the first, second and third indents."

> The first matter to note is that the term "integrated assessment" does not appear at all in the directive. The term has been used to refer to the fourth indent above, namely, an examination of the interaction between the other factors mentioned. It has not been claimed, and on the contrary it has been established, that the Board carried out a comprehensive EIA including the interaction between the factors referred to as far as the construction of the plant part of the project is concerned, to the exclusion only of the risk of environmental pollution, as defined in the statutory provision cited earlier in this judgment, related to the activity of the proposed installation.
>
> 102. It is also clear from the statutory functions of the Environmental Protection Agency, when considering whether to grant a waste licence, and from its statutory procedures, that the Environmental Protection Agency is required, at the very least, to carry out an environmental impact assessment which includes taking account of all the relevant factors and the interaction between them, for the purpose of assessing the risk of environmental pollution arising from the activity of the proposed plant.
>
> 103. In short, all of the factors referred to in article 3 of the directive, and the interaction between them, are examined as required by the directive and the interaction between them at each stage of the consent process by the relevant competent authority namely the Board and the Environmental Protection Agency respectively. The Board carries out an "integrated assessment" insofar as the construction of the project is concerned and the EPA carries out an "integrated assessment" insofar as the activity stemming from the operation of the plant is concerned.
>
> 104. It is also relevant to note that nowhere in the directive is it in any sense suggested that one competent body must carry out a "global assessment" nor a "single assessment" of the relevant environmental factors and the interaction between them. Those terms simply do not appear in it."

56. It is further submitted that that decision has been endorsed by the Court of Justice of the European Union in the very case upon which the applicant places such significant reliance in these proceedings i.e. Case C-50/09. At para. 72 of that decision it is stated:-

> "For the purposes of the freedom thus left to them to determine the competent authorities for giving development consent, for the purposes of that directive, the Member States may decide to entrust that task to several entities, as the Commission has moreover expressly accepted."

57. It is submitted that the issue that gave rise to an adverse decision against Ireland in that case was a separate issue entirely, to which I will refer below.

58. In relation to the changes to the project, both the EPA and SEPIL submit that any such changes were taken into account by the EPA in its assessment of the application. This is expressly stated in the report of the TC which, when considering the objection of the applicant in this regard stated:-

> "Finally, when the objection claims that the sequential process of EIA did not capture all changes to the project as it proceeded, this is not true in the case of the activity. The present application relates to the activity as it is now designed to operate."

59. This is also addressed by Mr. Frank Clinton, who swore the affidavit verifying the statement of opposition of the EPA . At para. 33 of his affidavit he avers:-

> "I note that the applicants assert that there have been changes to the gas pipeline and the gas terminal which have not been subject to EIA and which changes render the EIA conducted by the agency prior to granting the revised licence the subject matter of these proceedings unlawful. As pleaded in the statement of opposition herein, this is denied; the inspector, technical committee and agency were clearly aware of such changes as had been made and assessed same.
>
> I wish to elaborate on this briefly. First, the 2014 supplementary update report, Bellanavoy Bridge gas terminal, environmental impact statement, exhibited at "FCT6" addresses any relevant changes. Second, in her report the Inspector repeatedly clarifies areas in respect of which there have, or have not, been changes since the agency first licensed the activities under the 2007 licence; and the potential effects if any of such changes are identified, described and assessed as respects the matters that come within the functions of the agency.
>
> The Inspector also deals, at pp. 13-14 of her report, with a submission from An Bord Pleanála which made reference to "some lack of clarity" as to the material changes in respect of the discharge point for treated produced water, the emergency holding tank and septic tank and puraflo system. However, as noted by the inspector, 'while ABP acknowledges a lack of clarity in relation to the material changes on site for the purposes of assessing the physical planning implications arising on site, they are satisfied that the activities proposed in licence review application P0738-03 is as authorised by the planning permission granted for it. The licensee confirmed in correspondence received by the agency on 2nd September, 2014 that the development of the gas refinery is in compliance with extant permissions outlined above.'"

Decision on this issue

60. In their affidavits sworn in opposition to these proceedings, and the exhibits thereto, the EPA and SEPIL have identified in some considerable detail the extent of the EIA conducted by the EPA in relation to the application. The applicant has not identified any specific shortcomings in the EIA. The specific issue of cold venting, which she referred to in her submissions, was addressed by the Inspector in her report, and had been subject to EIA in connection with the 2007 licence application. The applicant does say, as does Mr. Sweetman, in his grounding affidavit, that there has been no assessment of changes to the project since the issue of previous consents , but this is flatly contradicted by the evidence of the respondents. It is clear from the evidence of the respondents that the EIA conducted by the EPA was an assessment of the Activities as they are designed to operate, and I am satisfied that it is so.

61. The applicant's other principle argument under this heading is a legal rather than a factual argument to the effect that the entire

project should be the subject of a single, integrated assessment, but it is very clear from the authorities referred to above i.e. *Martin v. An Bord Pleanála* and a *Case C-50/09* that not only is this argument unsupported by the authorities, but these authorities make it clear that this is not a requirement of the EIA Directive and that it is open to the competent authorities in Member States to entrust the task of EIA to several entities if they so consider appropriate. Accordingly, I am satisfied that the applicant has failed to establish that the EIA conducted by the EPA was not carried out in accordance with the EIA Directive. The applicant's challenge to the issue of the licence insofar as it is grounded upon a failure to conduct an EIA in accordance with the EIA Directive must therefore fail.

62. This is not of course a complete answer to Question 1(a) of the issues paper. However, on reflection, I do not think that it is the function of the Court to answer this question in the manner in which it is formulated, which is indistinguishable from seeking a declaration from the court that an EIA has been conducted in accordance with the EIA Directive. This is a much broader question which would require a court, assisted by expert evidence, to consider the minutiae of the EIA in the context of the requirements of the EIA Directive. In my view the task of the court is to consider whether or not the applicant has established any shortcomings in the EIA such as to amount to a failure to conduct the EIA in accordance with the requirements of the EIA Directive, and for the reasons that I have given above, she has not done so.

Issue 1(b): Was there an Environment Impact Assessment carried out for the purposes of domestic law?
63. In her oral submissions, the applicant stated that her submission as regards Question 1(b) is the same as that in relation to Question 1(a). The applicant has therefore advanced no submissions or evidence that the EIA was not conducted by the EPA in accordance with domestic law. However, I think it is fair to say that the central complaint of the applicant as far as domestic law is concerned is that in considering the application, the EPA was confined to a consideration of the activities described in s. 3(1) of the EPA Act, which for present purposes meant that the agency was confined to considering and assessing the environmental impacts of the operation of the gas refinery and combustion of fuels at that refinery, to include the emissions therefrom, including emissions to water. As we have seen earlier, it is the applicant's contention that there should be a single "integrated" EIA of the entirety of the project – in other words the State has not transposed correctly the EIA Directive into Irish law. This argument I have already dealt with above – there is simply no authority for this proposition and, if anything, the manner in which the State has chosen to implement the EIA Directive in domestic law has been endorsed by the Supreme Court in Martin and the Court of Justice in the European Union in Case C-50/09. In any case it follows from what I have said above that the applicant has not established that the EIA conducted by the EPA was not carried out in accordance with domestic law. As with Question 1(a) above, I do not think it is appropriate for me to answer the broader question as to whether or not an EIA was carried out in accordance with domestic law.

Issue 2: Is the applicant's contention that an adequate EIA was not carried premised on an impermissible collateral attack on the validity of earlier development consents?
64. In her oral submissions, the applicant stated that it was never her intention to attempt an impermissible collateral attack on earlier development consents and she stated that she is not seeking to have earlier consents set aside. She expressly stated that this question does not arise for her, and she did not address the question.

65. Strictly speaking therefore there is no need for me to address this question either, but it should be observed that each of the respondents robustly argued that it was not open to the applicant to seek to set aside earlier consents the dates for challenging which had long since passed. In this regard the respondents rely upon the decision of Barrett J. in *Harrington v. Environmental Protection Agency* [2014] IEHC 307 in which case the applicant's brother Mr. Martin Harrington challenged the decision of the EPA to amend the conditions of the 2007 licence so as to bring the same into conformity with the Industrial Emissions Directive. Barrett J. held that the applicant could not advance arguments premised on an alleged illegality in the grant of the 2007 licence, in circumstances where the decision to grant that licence had not been challenged. He stated, at para. 26:-

> "The clear purpose and effect of section 87(10) is to give certainty to those who are affected by decisions of the EPA. Thus it provides that such decisions must be challenged within a very short period of time with the obvious intention that, thereafter, persons affected by such decisions ought to be free to rely upon such decisions, safe in the knowledge that they are beyond challenge. This policy objective is of particular importance where considerable sums are to be expended in reliance on decisions or acts of the EPA, as Shell has done here. Section 87(10) precludes not just direct challenges to the validity of decisions of the EPA but also the making of any challenge or argument that would have the effect of impugning the validity of the decision of the EPA or involving a collateral attack upon it."

66. While Mrs. Harrington made it very clear that she did not wish to mount a collateral challenge to earlier consents or licences granted to SEPIL, there can be scarcely be any doubt but that had she done so, such a challenge would have been doomed to fail.

Issue 3: Was the approach adopted by the respondents consistent with the judgment of the European Court of Justice in Case C-50/09 and/or with C-50/09 relative to those assessments previously carried out?
67. It is difficult to know precisely what case the applicant is making as regards Case C-50/09. In her oral submissions she simply referred to her written submissions. In her written submissions she says:-

> "I advance that, if the said judgment CJEU *Case C-50/09* did not hold that all EIAs carried out under Irish law prior to 26th March, 2011 were unlawful, can that be read as meaning that some EIAs carried out prior to the said date were or might have been unlawful and rather than ascribe an "erroneous reading" of the judgment to this applicant the onus rests with the first respondent and I deny that they hitherto have so done…..?."

I could find no other reference to *Case C-50/09* in the written submissions of the applicant.

68. Insofar as she may rely upon the grounding affidavit of Mr. Sweetman, he does refer to the case on a number of occasions, but with some lack of specificity. However, at para. 11 of his affidavit he states:-

> "… I together with other applicants drew attention to the findings contained in a judgment of a European Court 50/09 which I say held that the type of approach adapted (sic) namely that multiple consents without a systematic and comprehensive over-arching analysis could not comply with European and Community law and that those projects and the practices carried out by the Environmental Protection Agency as well as the other agencies did not accord with and were directly in conflict with European Community law."

69. Later in his affidavit, he contends that the State respondents were required by reason of that decision to take steps to "nullify the unlawful consequences of the breach identified in *C-50/09* and in particular to take the measures necessary to remedy the failure to carry out an EIA and for example it would have been appropriate particularly in this case and the various consents granted in respect of this project would have been revoked (sic) that the project would have been subject to an Environment Impact Assessment which would have complied with the requirements of the Directive in the light of the acceptance by the second named

respondent of the judgment of the court". This could not be considered as anything other than a collateral attack on all earlier consents, which the applicant said on a number of occasions she did not intend to make. And in any case, it will be apparent from the above that such an attack is not permissible.

70. While Mr. Sweetman does make further reference to *Case C-50/09*, that is as close as he gets to making any substantive point and that point appeared to be that the decision of the Court of Justice of the European Union ("CJEU") in *Case C-50/09* had the effect of declaring that the procedures in Irish law as regards EIAs were defective because the task of conducting an EIA in relation to scheduled projects was spread out across a number of agencies.

71. The respondents submit that the CJEU made no such finding in *Case C-50/09* and that the applicant fundamentally misunderstands the issue before the court in that case, and the decision of the Court. The respondents submit that what was at issue in that case was a lacuna in Irish law arising from the fact that the EPA did not have power to compel the production of an EIA when considering an application in respect of which one was required. At that time the statutory obligation to submit an EIA arose only in the context of a planning application in connection with the same development. That gave rise to the possibility that if a party made an application to the EPA before it made an application to An Bord Pleanála for a planning permission, the EPA could find itself having to determine an application without the benefit of an EIS. The reality is that this did not happen in practice not least because there would be little benefit for a developer in seeking a licence from the EPA without simultaneously making an application for planning permission, since the developer needs consent from both authorities. Nonetheless, the CJEU found that it was not inconceivable that the EPA, as the authority responsible for licensing a project as regards pollution aspects, might make its decision without an EIA being carried out in accordance with Articles 2 to 4 of Council Directive 85/337 EEC (the first EIA Directive). This, the CJEU decided, leaves open the possibility that the EPA alone might decide, without an EIA complying with Articles 2 to 4 of Directive 85/337/EEC on a project as regards pollution aspects.

72. That, the respondents submit, is the extent of the finding as against Ireland in *Case C-50/09*. The respondents point to the fact that the court expressly held that it is permissible to entrust the task of EIA to several entities (see paras 20 and 27 above). Additionally, the respondents point to the fact by the time the application was made, the State respondents had closed the "gap" identified by the CJEU by way of amendments to the Environmental Protection Act 1992 and the Waste Management Act 1996 so as to impose an express obligation on the EPA to carry out an EIA as respects matters that come within the functions of the agency. Those amendments, which came into effect in 2012, applied to the application. The State respondents submit that the CJEU acknowledged in *Case C-50/09* that a failure to transpose Article 3 of the EIA Directive in express terms did not lead to a conclusion that any particular decision to grant development consent was invalid. The CJEU accepted, it is submitted, that the jurisprudence in this country imposed an obligation on decision makers to give effect to the requirements of the Directive in making any decision to grant development consent.

73. The State respondents also submit that the suggestion of the applicants that the decision of the CJEU in *Case C-50/09* has the effect that earlier consents were granted contrary to EU law or are otherwise invalid is incorrect, and amounts to an impermissible collateral challenge to the earlier consents.

74. I fully agree with the submissions of the respondents on this issue also. It is clear that the reliance placed by the applicant upon *Case C-50/09* is misplaced. There is absolutely nothing in the decision of the CJEU in the case to suggest that consents granted under the statutory regime as it then applied are invalid by reason of the lacuna identified in the case.

Issue 4: Did the first name respondent carry out an appropriate assessment for the purposes of the Habitats Directive?
75. The applicant contends that the Appropriate Assessment was deficient in the following respects:-

> (i) She contends that the Scott Cawley Report is not independent as the EPA claims, and in any event should have been made available to the public to facilitate submissions thereon. On the latter point, the applicant submitted that the court should have regard to the Aarhus Convention in considering this issue. It should be noted that Mr. Sweetman in his affidavit had also taken issue with the fact that the Scott Cawley Report was dated the same date as the decision of the TC, and therefore that committee could not have had any adequate regard to the content of the reports. The applicant however withdrew this latter objection during her oral submissions.
>
> (ii) There is no justification for permitting an increase in the emission limit value for suspended solids in storm water runoff from 5mg/1 to 30mg/1 and in this regard the EPA did not or could not have applied the test for appropriate assessment, articulated by this Court, in the case of *Kelly v. An Bord Pleanála* [2014] IEHC 400. In that case, Finlay Geoghegan J., having reviewed relevant case law of the European Court of Justice held that an appropriate assessment, to be lawfully conducted must (in summary):-
>
> > "(i) identify, in the light of the best scientific knowledge in the field, all aspects of the development project which can, by itself or in combination with other plans or projects, affect the European site in the light of its conservation objectives. This clearly requires both examination and analysis.
> >
> > (ii) contain complete, precise and definitive findings and conclusions and may not have lacunae or gaps. The requirement for precise and definitive findings and conclusions appears to require analysis, evaluation and decisions. Further, the reference to findings and conclusions in a scientific context requires both findings following analysis and conclusions following an evaluation each in the light of the best scientific knowledge in the field.
> >
> > (iii) May only include a determination that the proposed development will not adversely affect the integrity of any relevant European site where upon the basis of complete, precise and definitive findings and conclusions made the Board decides that no reasonable scientific doubt remains as to the absence of the identified potential effects."
>
> (iii) No reasons were given by the EPA in its decision to justify the increase in ELV at point SW2.

76. In relation to these issues, the respondents submit as follows:-

> (i) There was no obligation upon the EPA to share the Scott Cawley Report in circumstances where no issue was raised by that report which would require it to be circulated. The Scott Cawley Report agreed with the conclusions of the Inspector. The report was obtained by the TC out of an abundance of caution, in order to satisfy itself beyond any doubt that the conclusions of its Inspector were correct. Since the Scott Cawley Report endorsed the conclusions of the

Inspector, there was no requirement on the EPA arising out of national or European law or out of the requirements of natural and constitutional justice to make the Scott Cawley Report available for public consultation. The respondents rely on the decisions of this Court in *The State (Haverty) v. An Bord Pleanála* [1987] I.R. 485 and *Klohn v. An Bord Pleanála* [2009] 1 I.R. 59 in this regard.

(ii) The EPA did have regard to and applied the principles for appropriate assessment identified by this Court in *Kelly v. An Bord Pleanála*. As part of the Appropriate Assessment, the EPA assessed whether the proposed increase in ELV for suspended solids in respect of discharge point SW2 could affect the Carrowmore Lake complex SAC, and the Carrowmore Lake SPA. The Inspector noted that the ELV of 5mg/1 is "more typically associated with filtration rather than sedimentation" but that the storm water, which is to discharge at point SW2, is to be treated by sedimentation. She also noted that the water course to the Carrowmore Lake complex is currently unpolluted and that there is compliance with the current construction limit of 35mg/1. The Inspector concluded that a concentration ELV of 35mg/1 and a yearly average limit of 10mg/1 were in line with best available technique standards as regards the particular treatment technique i.e. sedimentation. The TC concluded that the yearly average concentration for suspended solids discharged from emission point SW2 was appropriate and endorsed the Appropriate Assessment, which was in turn endorsed by the Scott Cawley Report.

(iii) The minutes recording the decision of the EPA give detailed reasons for the conclusions reached by the EPA in this regard:-

> "The storm water drainage system includes an emergency holding tank upstream of the settlement ponds which will be isolated in the event of hydrocarbon contamination as detected by online TOC (Total Organic Carbon) and TC (Total Carbon) monitors fitted at the emergency holding tank to prevent the exceedance of environmental quality standards in the receding water.
>
> The licence requires the licensee to meet the emission limit values set in Schedule B2: emissions to water of this licence for SW1, SW2 and SW3 to ensure that the discharge will not negatively impact water quality and ensure that continued protection of water dependent protect species.
>
> The licence requires the provision of impervious areas and bunding, and requires containment to prevent contamination to soil/ground water from leaks and spills.
>
> The licence specifies that all tank, container and drum storage areas shall be rendered impervious to the materials stored therein. Bunds shall be designed having regard to agency guidelines "storage on transfer of materials for scheduled activities" (2004) which will minimise the potential for contamination of soil/ground water."

(iv) The EPA also makes the point that the features that have given rise to the designation of Carrowmore Lake complex as a special area of conservation and the Carrowmore Lake as a special protection area are terrestrial and not aquatic, and therefore any increase in suspended solids at the discharge point SW2 would not, on the basis of the conservation objectives for the site, adversely affect the integrity of the site.

(v) Detailed reasons for the increase in ELVs were in fact given and are set out in the minutes of the meeting of the EPA of 29th September, 2015. These are the reasons referred to above. These reasons are set out in greater detail in both the report of the Inspector and the report of the TC.

77. In relation to the above I have come to the following conclusions:-

(i) There was no obligation on the EPA to share the Scott Cawley Report. While the EPA took the view, out of an abundance of caution, that it was desirable to obtain an independent view as regards the Inspector's conclusions, it was under no obligation to do so. There is really no difference in substance between this exercise and having the Inspector's conclusions reviewed by a colleague within the agency. Had the Scott Cawley Report arrived at different conclusions, then the position might be different, but that does not arise.

(ii) Insofar as the applicant submitted that the Scott Cawley Report fell to be disclosed pursuant to the provisions of the Aarhus Convention., the applicant did not refer to any particular provision in the Aarhus Convention upon which she relies, but advanced the general proposition that the EPA had an obligation to share the report in order to afford members of the public their right, under the Convention, to participate in environmental decision making. However, that submission ignores the rights afforded to members of the public, at earlier stages in the process, to make observations, submissions and objections on applications to which the EPA Act applies. The report of the TC dated 24th September, 2015 record that because the issue had again been raised in objection, the EPA should commission an expert report to revisit the Appropriate Assessment in order to satisfy itself that the conclusions reached by the Inspector in her report were correct. It is clear that the TC made this decision out of an abundance of caution because before recording the decision, the report of the TC records that:-

> "The TC considers that complete, precise and definitive findings and conclusions on the AA are provided in s. 10.5 of the IR, which concludes that the proposed activities will not adversely affect the integrity of any relevant European site. On the basis of those findings and conclusions of the Inspector, the agency decided in the PD that no reasonable scientific doubt remains as to the absence of adverse effects on the integrity of the European sites identified. The agency's assessment and conclusion were clear, precise and had no gaps or lacunae.
>
> As the matter was raised again in objection, the agency decided that it should commission an expert report to revisit the appropriate assessment in order to satisfy itself that the conclusions reached by the Inspector in the IR were correct."

The report of the TC then goes on to record that the Scott Cawley Report endorsed the conclusions of the Inspector and went on to state that "the TC is satisfied that the agency should adopt the report of the Inspector, this report and the

expert report attached hereto as the appropriate assessment and that the assessment has been conducted in a manner which meets fully with the standard laid down by the court in *Kelly v. An Bord Pleanála*, of establishing beyond reasonable scientific doubt that the activities will not adversely affect the integrity of the site".

Against that background, I do not consider that the applicant had any right to receive the Scott Cawley Report by reason of the rights created under the Aarhus Convention. I agree with the submissions made on behalf of the EPA that the report, although procured with a view to obtaining an independent expert, is, vis-à-vis members of the public, an internal report of the EPA. Having already gone through the public consultation processes provided for by the legislation, it is the function of the agency to consider and analyse all of the information received and form conclusions. In this case, the procurement of the Scott Cawley Report formed part of that process, which was undertaken after the period for public consultation/participation.

(iii) Apart from her complaint about not being furnished with the Scott Cawley Report, the only specific complaint that the applicant makes about the Appropriate Assessment (or, more accurately, that Mr. Sweetman makes in his grounding affidavit) is that the ELV for suspended solids is increased in the Revised Licence from 5mg/1 to 30mg/1. Mr. Sweetman comments, with some incredulity that this is a six-fold increase, but nowhere in his affidavit does he comment upon whether or not this is likely to have an adverse impact on the environment, and in particular on the Carrowmore Lake into which storm water ultimately finds its way.

(iv) The issue was however the subject of detailed consideration by the Inspector. The first point to be made about this is that the discharge concerned is the discharge of rain water and ground water. The Inspector describes in her report the proposal for the drainage of this water leading up to discharge SW2 at Carrowmore Lake. She notes that the licensee (SEPIL) has applied to increase the suspended solids limit on these uncontaminated discharges from 5mg/1 to 30mg/1 as the suspended solid arising during heavy to moderate rainfall will be fines from crushed or grated rock underlying the refinery, and that the current emission limit value of 5mg/1 is more typically associated with filtration rather than sedimentation, the chosen method for treatment of storm water in this instance.

The Inspector refers to an assessment of the impact of sediments at Carrowmore Lake carried out both by the licensee and by Mayo County Council. The Inspector concludes that the contribution from SW2 is not considered significant and recommends an increase in the ELV "of 30mg/1 SS and the yearly average limit of 10mg/1 in line with BAT and the treatment technique".

In her concluding section on the Appropriate Assessment generally, (which related to all of the sites with which the Appropriate Assessment was concerned and not just Carrowmore Lake) the Inspector states:

> "an appropriate assessment has been completed and has determined based on best scientific knowledge in the field and in accordance with the European Communities (Birds and Natural Habitats) Regulations 2011 and 2013, pursuant to Article 6(3) of the Habitats Directive, that the proposed activities, individually or in combination with other plans or projects, will not adversely affect the integrity of any of the European sites specified in Table 4 above, having regard to their conservation objectives and will not affect the preservation of these sites at favourable conservation status if carried out in accordance with this licence". The Inspector goes on to set out her reasons for these conclusions and having done so states:-
>
> "In light of the foregoing reasons, no reasonable scientific doubt remains as to the absence of adverse effects on the integrity of those European sites specified in Table 4 above", which of course includes Carrowmore Lake.

In the report of the technical committee, specific reference is made to the test articulated by Finlay Geoghegan J. in *Kelly v. An Bord Pleanála*. I am satisfied that the application to increase the ELV at point SW2 was subjected to rigorous analysis in accordance with the obligations of the EPA under the Habitats Directive and having due regard to the principles articulated by Finlay Geoghegan J. in *Kelly v. An Bord Pleanála*, which are specifically referred to in the report of the technical committee. The applicant has failed to put forward any basis upon which it can be said that the Appropriate Assessment conducted by the EPA does not meet the requirements of the Habitats Directive, other than to object in a general way to an increase in the emission limit values for suspended solids. This by itself is not a sustainable ground of objection to the Appropriate Assessment and the claim of the applicant insofar as it relates to this issue must be dismissed.

Has there been a failure to give reasons in accordance with ground 12?

78. The reference to ground 12 here is to ground 12 of the legal grounds advanced by the applicant in her statement of grounds. Ground 12 states:-

> "The first named respondent failed to give any reasons sufficient to justify the change in the emissions from licence 0738-01 to licence 0738-03 in respect of the discharge of surface water to Carrowmore Lake particularly having regard to the requirements of the Habitats Directive."

79. In response to this, it is submitted on behalf of the EPA that the minutes recording the decision of the EPA set out a detailed list of its reasons for concluding that the licensed activities would not adversely affect the integrity of any European site. The emission concerned is uncontaminated surface water run-off from the gas refinery. The requirement for the increase in emission limit values arises because the emission limit value of 5mg/1 is more typically associated with treatment of storm water by filtration rather than by sedimentation, but that the storm water at point SW2 is to be treated by sedimentation. The minutes of the EPA decision on the issue record the various protective measures proposed by SEPIL to ensure that the discharge will not negatively impact upon water quality and ensure the continued protection of water dependent species.

80. I have been satisfied that far from not giving any reasons sufficient to justify the change in the ELV, the report of the Inspector, the report of the TC and the minutes of the EPA all record a detailed analysis of the issue and give reasons sufficient to justify the increase in ELV. In a nutshell, the EPA was satisfied that this increase will not give rise to any pollution of Carrowmore Lake and will not adversely affect the integrity of any relevant European site.

Can a licence which has expired and was not in existence be the subject of a review?

81. Firstly, this question is not correctly posed because it assumes that the 2007 licence had expired, and that is an issue of dispute between the parties. It is the contention of the applicant that the 2007 licence expired seven years after its issue date. It is an unsurprising assertion because the 2007 licence was granted on 12th November, 2007. However, in the exercise of its powers under s.92 (1) EPA Act, the EPA in this case specified that the 2007 Licence should have a duration of seven years. The applicant contends that the activity to which the licence relates had not commenced by 12th November, 2014 and therefore there was no licence for the EPA to review. That being the case, it is the applicant's case that the decision of the EPA to issue the Revised Licence is predicated upon a fundamental mistake of fact which vitiates the decision.

82. In their statement of opposition, the EPA states that by letter of 11th November, 2014, the notice party advised the EPA that the operation of the installation had commenced. It is contended that the EPA was therefore entitled to conclude that the activity authorised by the 2007 licence had commenced prior to the expiration of the relevant period for the purpose of s. 92 of the EPA Act. It is also contended that as a matter of law the licence does not cease to have effect until the EPA gives notice to that effect in accordance with s. 92(1) of the EPA Act . In the alternative, the EPA submits that the applicant is out of time to challenge the decision of the EPA not to serve a notice under s. 92(1).

83. In its submissions on this issue, SEPIL makes substantially the same submissions as the EPA, save that it adds that by letter of the 26th September, 2014, it advised the Office of Environmental Enforcement that it intended to commence operation of the scheduled activities on 1st November, 2014, and by further letter of 11th November, 2014, SEPIL advised the same office that the operation of the installation had commenced.

84. In her submissions, on this issue, the applicant states that there is nothing to indicate in the materials before the court that the EPA did anything to verify the confirmation received from SEPIL, and this indeed appears to be the case. She states that:-

> "While it is, strictly speaking, within the "letter of the law" for the notice party to send a note to the first respondent dated on the penultimate day of a seven year period of a claimed IPPC licence, it carries a strong whiff of sharp practice. The first respondent's reliance on what I would call an eleventh hour note is to me, at best, perceivable as showing compliance with the wishes of the notice party rather than ensuring compliance with the EIA and AA requirements per its statutory obligations."

85. It is indeed curious that there is nothing in the materials produced before the Court to indicate that the EPA verified that the activities the subject of the 2007 licence had indeed commenced within the seven year period. But it is beyond any doubt that the respondents are correct in their submissions as to the legal effect of s. 92(1) of the EPA Act. For a licence to cease to have effect, the EPA must notify the licence holder that the activity has not commenced within the specified period. Accordingly, the applicant's claim under this heading must fail also.

Issue 7: In the event that the answer to (1)(b) is in the affirmative, is the applicant's claim in respect of transposition inadmissible by reason of the applicant's failure to provide proper particulars of the alleged shortcomings in national law? If it is admissible, have the requirements of the Directive been appropriately transposed?
86. The applicant did not address this question at all in her submissions. I have already determined above that the applicant has failed to establish that there was any defect, for the purposes of domestic law, in the EIA carried out by the EPA. Absent any particulars as to the alleged shortcomings in national law, I consider that the applicant's claim, insofar as the applicant herself has advanced it at all, that the State respondents have failed to transpose the requirements of the EIA Directive properly, is inadmissible.

Issue 8: Whether the proceedings previously brought and the subsequent settlement in November 2011 are such as to disentitle or prevent these proceedings against the State respondents and/or the EPA from being heard and determined, in whole or in part?
87. The respondents elected not to pursue this line of opposition in view of the fact that the applicant was not a party to the settlement of proceedings in November, 2011.

Issue 9: Does the applicants' failure to disclose the existence of the earlier proceedings and of the settlement agreement in their application for leave to apply for judicial review amount to a breach of the applicants' duty of disclosure such as to disentitle the applicant to any relief?
88. This question was formulated when all named applicants were parties to the proceedings. The applicant submits that she was not a party to the 2011 proceedings and has every entitlement to prosecute these proceedings on her own behalf and in her own name. Undoubtedly, the third and fourth named applicants should have brought the settlement of the 2011 proceedings to the attention of the Court when making application for leave to bring these proceedings. Even if they had done so however, it is difficult to see how this could have precluded the applicant from bringing forward these proceedings. It is true that the terms of the settlement agreement imposed an obligation on the second and third named respondents not to procure or encourage or assist others to institute or pursue any legal proceedings, of whatever kind, seeking to challenge or otherwise question the validity of the consents referred to in the terms of settlement. However, that did not and could not create any obligation as far as the second named applicant is concerned. Accordingly, while I have found that the applicant is not entitled to any of the reliefs that she seeks, had I concluded otherwise, the failure on the part of the third and fourth named applicants, or indeed on the part of the applicant herself, to disclose the 2011 proceedings and the settlement agreement to the court at the time of the leave application could not in my view disentitle the applicant to relief to which she would otherwise be entitled.

89. Since the applicant has failed to obtain any of the reliefs sought by these proceedings, the application must be dismissed in its entirety. The applicant also requested that I might refer a number of issues to the CJEU for determination, but I do not believe that there is any necessity to do so. None of the issues raised by the applicant are such as to merit a reference, as they are either issues about which the CJEU has already adjudicated or about which there is not any doubt about the interpretation of a provision of EU law, or its transposition into Irish law.