Appendix 1

Appendix 1

JUDGMENT OF THE COURT (Second Chamber)

3 July 2008 *

In Case C-215/06,

ACTION under Article 226 EC for failure to fulfil obligations, brought on 11 May 2006,

Commission of the European Communities, represented by D. Recchia and D. Lawunmi, acting as Agents, with an address for service in Luxembourg,

applicant,

v

Ireland, represented by D. O'Hagan, acting as Agent, J. Connolly SC and G. Simons BL, with an address for service in Luxembourg,

defendant,

* Language of the case: English.

THE COURT (Second Chamber),

composed of C.W.A. Timmermans, President of the Chamber, L. Bay Larsen, J. Makarczyk (Rapporteur), P. Kūris and J.-C. Bonichot, Judges,

Advocate General: J. Mazák,
Registrar: B. Fülöp, Administrator,

having regard to the written procedure and further to the hearing on 14 February 2008,

having decided, after hearing the Advocate General, to proceed to judgment without an Opinion,

gives the following

Judgment

1 By its action the Commission of the European Communities seeks a declaration from the Court that:

— by failing to adopt all measures necessary to ensure that projects which are within the scope of Council Directive 85/337/EEC of 27 June 1985 on the assessment

of the effects of certain public and private projects on the environment (OJ 1985 L 175, p. 40) either before or after amendment by Council Directive 97/11/EC of 3 March 1997 (OJ 1997 L 73, p. 5) are, before they are executed in whole or in part, first, considered with regard to the need for an environmental impact assessment and, secondly, where those projects are likely to have significant effects on the environment by virtue of their nature, size or location, that they are made subject to an assessment with regard to their effects in accordance with Articles 5 to 10 of Directive 85/337, and

— by failing to adopt all measures necessary to ensure that the development consents given for, and the execution of, wind farm developments and associated works at Derrybrien, County Galway, were preceded by an assessment with regard to their environmental effects in accordance with Articles 5 to 10 of Directive 85/337,

Ireland has failed to fulfil its obligations under Articles 2, 4 and 5 to 10 of that directive.

Legal context

Community legislation

2 By its action the Commission seeks a declaration that Ireland has failed to fulfil its obligations under Directive 85/337 both in its original version and in the version as amended by Directive 97/11.

Directive 85/337

3 The wording of Article 1(2) and (3) of Directive 85/337 is as follows:

'2. For the purposes of this Directive:

"project" means

— the execution of construction works or of other installations or schemes,

— other interventions in the natural surroundings and landscape including those involving the extraction of mineral resources;

"developer" means:

the applicant for authorisation for a private project or the public authority which initiates a project;

"development consent" means:

the decision of the competent authority or authorities which entitles the developer to proceed with the project.

3. The competent authority or authorities shall be that or those which the Member States designate as responsible for performing the duties arising from this Directive.'

4 Article 2(1) and (2) and the first subparagraph of Article 2(3) of Directive 85/337 provide:

'1. Member States shall adopt all measures necessary to ensure that, before consent is given, projects likely to have significant effects on the environment by virtue, inter alia, of their nature, size or location are made subject to an assessment with regard to their effects.

These projects are defined in Article 4.

2. The environmental impact assessment may be integrated into the existing procedures for consent to projects in the Member States, or, failing this, into other procedures or into procedures to be established to comply with the aims of this Directive.

3. Member States may, in exceptional cases, exempt a specific project in whole or in part from the provisions laid down in this Directive.'

5 Article 3 of Directive 85/337 provides:

'The environmental impact assessment will identify, describe and assess in an appropriate manner, in the light of each individual case and in accordance with Articles 4 to 11, the direct and indirect effects of a project on the following factors:

— human beings, fauna and flora,

— soil, water, air, climate and the landscape,

— the inter-action between the factors mentioned in the first and second indents,

— material assets and the cultural heritage.'

6 Article 4 of that directive is worded as follows:

'1. Subject to Article 2(3), projects of the classes listed in Annex I shall be made subject to an assessment in accordance with Articles 5 to 10.

2. Projects of the classes listed in Annex II shall be made subject to an assessment, in accordance with Articles 5 to 10, where Member States consider that their characteristics so require.

To this end Member States may inter alia specify certain types of projects as being subject to an assessment or may establish the criteria and/or thresholds necessary to determine which of the projects of the classes listed in Annex II are to be subject to an assessment in accordance with Articles 5 to 10.'

7 Article 5 of Directive 85/337 states:

'1. In the case of projects which, pursuant to Article 4, must be subjected to an environmental impact assessment in accordance with Articles 5 to 10, Member States shall adopt the necessary measures to ensure that the developer supplies in an appropriate form the information specified in Annex III inasmuch as:

(a) the Member States consider that the information is relevant to a given stage of the consent procedure and to the specific characteristics of a particular project or type of project and of the environmental features likely to be affected;

(b) the Member States consider that a developer may reasonably be required to compile this information having regard inter alia to current knowledge and methods of assessment.

2. The information to be provided by the developer in accordance with paragraph 1 shall include at least:

— a description of the project comprising information on the site, design and size of the project,

— a description of the measures envisaged in order to avoid, reduce and, if possible, remedy significant adverse effects,

— the data required to identify and assess the main effects which the project is likely to have on the environment,

— a non-technical summary of the information mentioned in indents 1 to 3.

3. Where they consider it necessary, Member States shall ensure that any authorities with relevant information in their possession make this information available to the developer.'

8 Article 6 of Directive 85/337 is worded as follows:

'1. Member States shall take the measures necessary to ensure that the authorities likely to be concerned by the project by reason of their specific environmental responsibilities are given an opportunity to express their opinion on the request for development consent. Member States shall designate the authorities to be consulted for this purpose in general terms or in each case when the request for consent is made. The information gathered pursuant to Article 5 shall be forwarded to these authorities. Detailed arrangements for consultation shall be laid down by the Member States.

2. Member States shall ensure that:

— any request for development consent and any information gathered pursuant to Article 5 are made available to the public,

— the public concerned is given the opportunity to express an opinion before the project is initiated.

...'

9 Article 7 of Directive 85/337 provides:

'Where a Member State is aware that a project is likely to have significant effects on the environment in another Member State or where a Member State likely to be significantly affected so requests, the Member State in whose territory the project is intended to be carried out shall forward the information gathered pursuant to Article 5 to the other Member State at the same time as it makes it available to its own nationals. Such information shall serve as a basis for any consultations necessary in the framework of the bilateral relations between two Member States on a reciprocal and equivalent basis.'

10 Article 8 of Directive 85/337 states:

'Information gathered pursuant to Articles 5, 6 and 7 must be taken into consideration in the development consent procedure.'

11 Article 9 of that directive is worded as follows:

'When a decision has been taken, the competent authority or authorities shall inform the public concerned of:

— the content of the decision and any conditions attached thereto,

— the reasons and considerations on which the decision is based where the Member States' legislation so provides.

The detailed arrangements for such information shall be determined by the Member States.

If another Member State has been informed pursuant to Article 7, it will also be informed of the decision in question.'

12 Article 10 of that directive provides:

'The provisions of this Directive shall not affect the obligation on the competent authorities to respect the limitations imposed by national regulations and administrative provisions and accepted legal practices with regard to industrial and commercial secrecy and the safeguarding of the public interest.

Where Article 7 applies, the transmission of information to another Member State and the reception of information by another Member State shall be subject to the limitations in force in the Member State in which the project is proposed.'

13 Annex II to Directive 85/337 lists projects subject to Article 4(2) of that directive, namely those for which an environmental impact assessment is necessary only where the Member States consider that their characteristics so require. Projects referred to in that annex include, in point 2(a), extraction of peat, and in point 2(c), extraction of minerals other than metalliferous and energy-producing minerals, such as marble, sand, gravel, shale, salt, phosphates and potash.

14 Projects listed in point 10(d) of Annex II include the construction of roads.

Directive 97/11

15 Article 3 of Directive 97/11 is worded as follows:

'1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by 14 March 1999 at the latest. They shall forthwith inform the Commission thereof.

...

2. If a request for development consent is submitted to a competent authority before the end of the time-limit laid down in paragraph 1, the provisions of Directive 85/337/EEC prior to these amendments shall continue to apply.'

Directive 85/337 as amended by Directive 97/11 ('Directive 85/337 as amended')

16 In the interests of clarity, reference will be made only to the amendments to Directive 85/337 which have direct relevance to the alleged failure by Ireland to fulfil

its obligations. Accordingly, reference will not be made to amendments introduced by Directive 97/11 to Articles 5 to 10 of Directive 85/337, since those have no bearing on the determination of this action which the Court is called upon to make.

17 Under Article 2(1) and (2) and the first subparagraph of Article 2(3) of Directive 85/337 as amended:

'1. Member States shall adopt all measures necessary to ensure that, before consent is given, projects likely to have significant effects on the environment by virtue, inter alia, of their nature, size or location are made subject to a requirement for development consent and an assessment with regard to their effects. These projects are defined in Article 4.

2. The environmental impact assessment may be integrated into the existing procedures for consent to projects in the Member States, or, failing this, into other procedures or into procedures to be established to comply with the aims of this Directive.

...

3. Without prejudice to Article 7, Member States may, in exceptional cases, exempt a specific project in whole or in part from the provisions laid down in this Directive.'

18 Article 3 of Directive 85/337 as amended provides:

'The environmental impact assessment shall identify, describe and assess in an appropriate manner, in the light of each individual case and in accordance with Articles 4 to 11, the direct and indirect effects of a project on the following factors:

— human beings, fauna and flora;

— soil, water, air, climate and the landscape;

— material assets and the cultural heritage;

— the interaction between the factors mentioned in the first, second and third indents.'

19 Article 4 of Directive 85/337 as amended provides:

'1. Subject to Article 2(3), projects listed in Annex I shall be made subject to an assessment in accordance with Articles 5 to 10.

2. Subject to Article 2(3), for projects listed in Annex II, the Member States shall determine through:

(a) a case-by-case examination,

or

(b) thresholds or criteria set by the Member State,

whether the project shall be made subject to an assessment in accordance with Articles 5 to 10.

Member States may decide to apply both procedures referred to in (a) and (b).

3. When a case-by-case examination is carried out or thresholds or criteria are set for the purpose of paragraph 2, the relevant selection criteria set out in Annex III shall be taken into account.

4. Member States shall ensure that the determination made by the competent authorities under paragraph 2 is made available to the public.'

20 Point 3(i) of Annex II to Directive 85/337 as amended specifies installations for the harnessing of wind power for energy production (wind farms).

21 By virtue of point 13 of Annex II, any change or extension of projects listed in Annex I or Annex II, already authorised, executed or in the process of being executed, which may have significant adverse effects on the environment (being a change or extension not listed in Annex I) must be regarded as a project within the scope of Article 4(2) of Directive 85/337 as amended.

22 Annex III to Directive 85/337 as amended, relating to the selection criteria referred to in Article 4(3) of that directive, provides that the characteristics of projects must be considered in relation, inter alia, to pollution and nuisances, and to the risk of accidents having regard in particular to technologies used. That annex also indicates that the environmental sensitivity of geographical areas likely to be affected by projects must be considered having regard, inter alia, to the absorption capacity of the natural environment, paying particular attention to certain areas, including mountain and forest areas.

National legislation

23 The requirements of Directive 85/337 as amended have been transposed into national law by, in particular, the Planning and Development Act, 2000, as amended ('the PDA'), and the Planning and Development Regulations, 2001.

24 Section 32(1)(a) of the PDA lays down a general obligation to obtain consent for all development projects within the scope of Annexes I and II to Directive 85/337 as amended; the application for permission must be lodged and the permission obtained before the commencement of works. In addition, section 32(1)(b) of the PDA

provides that permission can be obtained to regularise unauthorised development (retention permission).

25 On receipt of an application for permission, the planning authority must decide whether the proposed development should be subject to an environmental impact assessment.

26 Section 151 of the PDA provides that any person who has carried out or is carrying out unauthorised development is guilty of an offence.

27 It is clear from sections 152 and 153 of the PDA that, on receipt of a complaint, planning authorities are, as a general rule, under an obligation to issue a warning letter, and must then decide whether or not it is appropriate to issue an enforcement notice. Failure to comply with the requirements of an enforcement notice constitutes an offence.

28 Under section 160 of the PDA:

'(1) Where an unauthorised development has been, is being or is likely to be carried out or continued, the High Court or the Circuit Court may, on the application of a planning authority or any other person, whether or not the person has an interest in the land, by order require any person to do or not to do, or to cease to do, as the case may be, anything that the Court considers necessary and specifies in the order to ensure, as appropriate, the following:

(a) that the unauthorised development is not carried out or continued;

(b) in so far as practicable, that any land is restored to its condition prior to the commencement of any unauthorised development;

(c) that any development is carried out in conformity with the permission pertaining to that development or any condition to which the permission is subject.

(2) In making an order under subsection (1), where appropriate, the Court may order the carrying out of any works, including the restoration, reconstruction, removal, demolition or alteration of any structure or other feature.'

29 Section 162 of the PDA makes clear that an application for retention permission does not entail any ongoing enforcement action being stayed or withdrawn.

Pre-litigation procedure

30 After sending a letter of formal notice on 5 April 2001, the Commission sent to Ireland a reasoned opinion dated 21 December 2001.

31 On 7 July 2004, the Commission sent an additional letter of formal notice to Ireland.

32 On 5 January 2005, after the receipt of Ireland's observations as set out in a letter dated 6 December 2004, an additional reasoned opinion was sent to Ireland.

33 Since the Commission considered that Ireland's response to that reasoned opinion, in letters of 8 March, 17 June and 1 December 2005, was unsatisfactory, it brought this action under the second paragraph of Article 226 EC.

The action

The first complaint

34 The Commission's complaint is that Ireland has not taken all the measures necessary to comply with Articles 2, 4 and 5 to 10 of Directive 85/337 either in its original version or as amended by Directive 97/11. This complaint will be examined, first, in relation to Directive 85/337 as amended.

35 The first complaint, that transposition of Directive 85/337 as amended is incomplete and that, as a result, the directive is not properly implemented is based on three pleas in law.

36 First, the Commission claims that Ireland has not taken the measures necessary in order to ensure that checks are made to ascertain, in accordance with Article 2(1) of Directive 85/337 as amended, whether proposed works are likely to have significant effects on the environment, and, if that is the case, in order to render it obligatory that an environmental impact assessment be carried out, as laid down by that provision, before the grant of development consent.

37 Secondly, the Commission considers that the Irish legislation which allows an application for retention permission to be made after a development has been executed in whole or in part without consent undermines the preventive objectives of Directive 85/337 as amended.

38 Thirdly, the Commission claims that the enforcement regime established by Ireland does not guarantee the effective application of the directive, and that Ireland has thereby failed to fulfil its general obligation under Article 249 EC.

39 In support of the third plea in law, the Commission reports a number of examples which, in its opinion, illustrate the deficiencies in the application of the system of enforcement.

The first two pleas in law

— Arguments of the parties

40 The Commission claims that since it is possible, under the national legislation, to comply with the obligations imposed by Directive 85/337 as amended during or after execution of a development, there is no clear obligation to subject developments to an assessment of their effects on the environment before they are carried out.

41 In accepting that projects can be scrutinised, in an environmental impact assessment, after their execution, when the principal objective pursued by Directive 85/337 as amended is that effects on the environment should be taken into account at the earliest possible stage in all planning and decision-making processes, the national

legislation in question recognises a possibility of regularisation which results in the undermining of that directive's effectiveness.

42 The Commission adds that the rules relating to retention permission are incorporated within the general provisions applicable to normal planning permission, and that there is nothing to indicate that applications for retention permission and the grant of such permission are limited to exceptional cases.

43 Ireland contends that the Commission's analysis of the Irish legislation which transposes Directive 85/337 as amended is not accurate. Ireland states that Irish law expressly requires that permission be obtained for any new development before the commencement of works and that, as regards development which must be subject to an environmental impact assessment, the assessment must be carried out before the works. Failure to comply with those obligations is, moreover, a criminal offence and may result in enforcement action.

44 Ireland contends, in addition, that retention permission, established by the PDA and the Planning and Development Regulations, 2001, is an exception to the general rule which requires permission to be obtained before the commencement of a development, and best meets the objectives of Directive 85/337 as amended, in particular the general objective of protection of the environment, since the removal of an unauthorised development may not be the most appropriate measure to achieve that protection.

45 According to that Member State, the requirements of Directive 85/337 as amended are wholly procedural and are silent as to whether there may or may not be an exception by virtue of which an environmental impact assessment might, in certain cases, be carried out after commencement of works. Ireland adds that nowhere in the directive is it expressly stated that an assessment can solely be carried out before the execution of a project, and refers to the definition of the term 'development consent' given by Directive 85/337 as amended to argue that the use of 'proceed' is significant,

that term not being confined to the commencement of works but also applying to the continuation of a development project.

46 Ireland contends, in addition, that retention permission is a reasonable fall-back mechanism to be resorted to in exceptional circumstances, designed to take account of the fact that some projects will inevitably, for various reasons, commence before the grant of development consent within the meaning of Directive 85/337 as amended.

47 On that point, Ireland relies on Case C-201/02 *Wells* [2004] ECR I-723 to argue that a remedial assessment may be carried out at a later stage, by way of exception to the general rule that the assessment must be carried out at the earliest possible stage in the decision-making process.

48 That Member State considers also that it would be disproportionate to order the removal of some structures in circumstances where, after consideration of an application for retention permission, retention is held to be compatible with proper planning and sustainable development.

— Findings of the Court

49 Member States must implement Directive 85/337 as amended in a manner which fully corresponds to its requirements, having regard to its fundamental objective which, as is clear from Article 2(1), is that, before development consent is given, projects likely to have significant effects on the environment by virtue, inter alia, of their nature, size or location should be made subject to a requirement for development consent and an assessment with regard to their effects (see, to that effect, Case

C-287/98 *Linster* [2004] ECR I-723, paragraph 52, and Case C-486/04 *Commission* v *Italy* [2006] ECR I-11025, paragraph 36).

50 Further, development consent, under Article 1(2) of Directive 85/337 as amended, is the decision of the competent authority or authorities which entitles the developer to proceed with the project.

51 Given that this wording regarding the acquisition of entitlement is entirely unambiguous, Article 2(1) of that directive must necessarily be understood as meaning that, unless the applicant has applied for and obtained the required development consent and has first carried out the environmental impact assessment when it is required, he cannot commence the works relating to the project in question, if the requirements of the directive are not to be disregarded.

52 That analysis is valid for all projects within the scope of Directive 85/337 as amended, whether they fall under Annex I and must therefore systematically be subject to an assessment pursuant to Articles 2(1) and 4(1), or whether they fall under Annex II and, as such, and in accordance with Article 4(2), are subject to an impact assessment only if, in the light of thresholds or criteria set by the Member State and/or on the basis of a case-by-case examination, they are likely to have significant effects on the environment.

53 A literal analysis of that kind of Article 2(1) is moreover consonant with the objective pursued by Directive 85/337 as amended, set out in particular in recital 5 of the preamble to Directive 97/11, according to which 'projects for which an assessment is required should be subject to a requirement for development consent [and] the assessment should be carried out before such consent is granted'.

54 As the Irish legislation stands, it is undisputed that environmental impact assessments and planning permissions must, as a general rule, be respectively carried out and obtained, when required, prior to the execution of works. Failure to comply with those obligations constitutes under Irish law a contravention of the planning rules.

55 However, it is also undisputed that the Irish legislation establishes retention permission and equates its effects to those of the ordinary planning permission which precedes the carrying out of works and development. The former can be granted even though the project to which it relates and for which an environmental impact assessment is required pursuant to Articles 2 and 4 of Directive 85/337 as amended has been executed.

56 In addition, the grant of such a retention permission, use of which Ireland recognises to be common in planning matters lacking any exceptional circumstances, has the result, under Irish law, that the obligations imposed by Directive 85/337 as amended are considered to have in fact been satisfied.

57 While Community law cannot preclude the applicable national rules from allowing, in certain cases, the regularisation of operations or measures which are unlawful in the light of Community law, such a possibility should be subject to the conditions that it does not offer the persons concerned the opportunity to circumvent the Community rules or to dispense with applying them, and that it should remain the exception.

58 A system of regularisation, such as that in force in Ireland, may have the effect of encouraging developers to forgo ascertaining whether intended projects satisfy the criteria of Article 2(1) of Directive 85/337 as amended, and consequently, not to undertake the action required for identification of the effects of those projects on the environment and for their prior assessment. The first recital of the preamble to Directive 85/337 however states that it is necessary for the competent authority to take effects on the environment into account at the earliest possible stage in all the technical planning and decision-making processes, the objective being to prevent the creation of pollution or nuisances at source rather than subsequently trying to counteract their effects.

59 Lastly, Ireland cannot usefully rely on *Wells*. Paragraphs 64 and 65 of that judgment point out that, under the principle of cooperation in good faith laid down in Article 10 EC, Member States are required to nullify the unlawful consequences of a breach of Community law. The competent authorities are therefore obliged to take the measures necessary to remedy failure to carry out an environmental impact assessment, for example the revocation or suspension of a consent already granted in

order to carry out such an assessment, subject to the limits resulting from the procedural autonomy of the Member States.

60 This cannot be taken to mean that a remedial environmental impact assessment, undertaken to remedy the failure to carry out an assessment as provided for and arranged by Directive 85/337 as amended, since the project has already been carried out, is equivalent to an environmental impact assessment preceding issue of the development consent, as required by and governed by that directive.

61 It follows from the foregoing that, by giving to retention permission, which can be issued even where no exceptional circumstances are proved, the same effects as those attached to a planning permission preceding the carrying out of works and development, when, pursuant to Articles 2(1) and 4(1) and (2) of Directive 85/337 as amended, projects for which an environmental impact assessment is required must be identified and then — before the grant of development consent and, therefore, necessarily before they are carried out — must be subject to an application for development consent and to such an assessment, Ireland has failed to comply with the requirements of that directive.

62 Consequently, the first two pleas in law are well founded.

The third plea in law

— Arguments of the parties

63 According to the Commission, there are shortcomings in the Irish legislation relating to enforcement measures and in the resulting enforcement practices which

undermine the proper transposition and implementation of Directive 85/337 as amended, when, under that directive, an effective system of control and enforcement is mandatory.

64 First, the Commission claims that the enforcement measures provided for by Irish planning legislation do not offset the absence of provisions requiring compliance with the obligations as to an environmental impact assessment before development is carried out.

65 Secondly, the Commission claims that enforcement practices undermine the proper transposition of Directive 85/337 as amended. The Commission refers to specific situations which illustrate, in its opinion, the deficiencies of the Irish legislation regarding supervising compliance with the rules established by that directive.

66 As regards the procedure relating to enforcement, Ireland contends the choice and form of enforcement is a matter within the discretion of Member States, in particular as there has been no harmonisation at Community level of planning and environmental controls.

67 In any event, Ireland states that the system of enforcement established by the Irish legislation is comprehensive and effective. The Member State adds that, under environmental law, the applicable provisions are legally binding.

68 Thus, the legislation places planning authorities under the obligation of sending a warning letter when they learn that an unauthorised development is being carried out, unless they consider that the development is of minor importance.

69 Once the warning letter has been sent, the planning authorities must decide whether it is appropriate to issue an enforcement notice.

70 The warning letter is intended to enable the persons responsible for unauthorised developments to undertake remedial action before the enforcement notice and the other stages of enforcement proceedings.

71 If an enforcement notice is issued, that sets out obligations and failure to comply with its requirements constitutes an offence.

72 Ireland adds that the enforcement regime must take account of various competing rights held by developers, landowners, the public and individuals directly affected by the development, and the weight of those various rights must be measured in order to reach a fair result.

73 Lastly, Ireland does not accept that the examples reported by the Commission prove the alleged failure to fulfil its obligations, since the Commission limits itself to general assertions.

— Findings of the Court

74 It is undisputed that, in Ireland, the absence of an environmental impact assessment required by Directive 85/337 as amended can be remedied by obtaining a retention permission which makes it possible, in particular, to leave projects which were not properly authorised undisturbed, provided that the application for such a permission is made before the commencement of enforcement proceedings.

75 The consequence of that possibility, as indeed Ireland recognises, may be that the competent authorities do not take action to suspend or put an end to a project that is within the scope of Directive 85/337 as amended and is being carried out or has already been carried out with no regard to the requirements relating to development consent and to an environmental impact assessment prior to issue of that development consent, and that they refrain from initiating the enforcement procedure provided for by the PDA, in relation to which Ireland points out that the powers are discretionary.

76 The inadequacy of the enforcement system set up by Ireland is accordingly demonstrated inasmuch as the existence of retention permission deprives it of any effectiveness, and that inadequacy is the direct consequence of the Member State's failure to fulfil its obligations which was found in the course of consideration of the first two pleas in law.

77 That conclusion is not affected by the fact that, according to Ireland, the enforcement regime must take account of the various competing rights held by developers, landowners, the public and individuals directly affected by the development. The need to weigh those interests cannot in itself provide justification for the ineffectiveness of a system of control and enforcement.

78 Accordingly, it becomes superfluous to analyse the various examples put forward by the Commission to illustrate the deficiencies in application of the enforcement measures, since those deficiencies are the direct result of the inadequacies of the Irish legislation itself.

79 Consequently, the third plea in law is also well founded, and therefore the first complaint must be upheld on all of the pleas in law.

80 Lastly, the decision that the first complaint is well founded holds good both with regard to Directive 85/337 as amended and with regard to Directive 85/337. Under

both the original and the amended version of the directive, projects likely to have significant effects on the environment must be subject to an assessment of their effects before the grant of development consent, the definition of development consent moreover remaining unchanged. In addition, the characteristics of the retention permission that are specified by the Irish legislation have remained the same.

81 It follows from the foregoing that, by failing to adopt all measures necessary to ensure that projects which are within the scope of Directive 85/337 either before or after amendment by Directive 97/11 are, before they are executed in whole or in part, first, considered with regard to the need for an environmental impact assessment and, secondly, where those projects are likely to have significant effects on the environment by virtue of their nature, size or location, that they are made subject to an assessment with regard to their effects in accordance with Articles 5 to 10 of that directive, Ireland has failed to fulfil its obligations under Articles 2, 4 and 5 to 10 of that directive.

The second complaint

82 This complaint relates to the circumstances obtaining for the construction of a wind farm at Derrybrien, County Galway, in relation to which it is useful first to note the various consents obtained.

83 As is clear from the documents before the Court, applications for consent relating to the first two phases of the development, each involving 23 wind turbines, were submitted on 4 and 18 December 1997. Fresh applications were lodged on 23 January 1998, since the earlier applications for consent were held to be invalid. Permission was issued on 12 March 1998. On 5 October 2000, an application was made for consent for a third phase of works relating, inter alia, to 25 turbines and service

roadways, which was approved on 15 November 2001. On 20 June 2002, the developer applied for consent to alter the first two phases of the development, and those changes were authorised on 30 July 2002. In October 2003, when the consent granted for the first two phases of the works had expired, the developer applied for renewal of that consent, which was granted in November 2003.

Arguments of the parties

84 By this complaint, the Commission claims that Ireland did not take all the measures necessary to ensure that the development consents relating to the wind farm and associated works were preceded by an assessment of the environmental effects of the project, in accordance with Articles 5 to 10 of Directive 85/337 and of Directive 85/337 as amended.

85 The Commission argues that, while, pursuant to the Irish legislation, environmental impact assessments were carried out for various constituent parts of the development, those assessments were deficient.

86 In particular, the environmental impact assessment carried out in 1998 did not properly address the environmental risks attached to execution of the various constituent parts of the development. The impact assessment carried out for the third phase of the development was vitiated by the same inadequacies.

87 The Commission adds that the wind farm is the largest terrestrial wind-energy development ever planned in Ireland and one of the largest in Europe.

88 The Commission claims also that the construction of the wind farm required the destruction of large areas of coniferous forest amounting to 263 hectares, a felling licence having been granted on 20 May 2003. However, no environmental impact assessment was carried out for that operation, contrary to the very requirements of the Irish legislation.

89 The Commission adds that, after the landslide which occurred on 16 October 2003 and the consequent ecological disaster, when the mass of peat which was dislodged from an area under development for the wind farm polluted the Owendalulleegh river, causing the death of about 50 000 fish and lasting damage to the fish spawning beds, Ireland carried out no fresh environmental impact assessment of this construction before the resumption of work on the site by the developer in 2004.

90 Ireland contends that, when consents were applied for, in 1997 and in 1998, for the first two phases of construction of the wind farm, neither Annex I nor Annex II to Directive 85/337 referred to that category of project as being among those within its scope. Accordingly, it was not necessary that consent be preceded by an environmental impact assessment as governed by that directive. Ireland adds that the applications submitted in 1998 were, however, accompanied, in accordance with the Irish legislation, by an environmental impact statement.

91 Ireland considers, moreover, that it is artificial to attempt to suggest that ancillary aspects of the wind farm project, such as road construction, peat extraction, quarrying or electricity transmission, were of such importance that they made an environmental impact assessment within the meaning of Directive 85/337 necessary.

92 Ireland considers, in addition, that an application to extend the duration of a planning permission does not constitute 'development consent' within the meaning of Directive 85/337 as amended.

93 Ireland contends lastly that the landslide was caused by the construction methods used and that there was no question of difficulties which could have been anticipated by an environmental impact assessment, even one in conformity with the Community requirements. It also states that, in order to ensure the safe completion of the wind farm, construction work practices were changed, after construction work had been suspended and an investigation carried out.

Findings of the Court

94 First, as regards the circumstances in which the consents relating to the first two phases of construction of the wind farm project were granted on 12 March 1998 following applications submitted on 23 January 1998, it is necessary to begin by deciding whether Directive 85/337 is applicable.

95 It is clear from Article 3 of Directive 97/11 that if an application for development consent was submitted to a competent authority before 14 March 1999, the provisions of Directive 85/337 continued to apply.

96 Moreover, while it is common ground that installations for the harnessing of wind power for energy production are not listed in either Annex I or Annex II to Directive 85/337, it is not disputed by Ireland that the first two phases of construction of the wind farm required a number of works, including the extraction of peat and of minerals other than metalliferous and energy-producing minerals, and also road construction, which are listed in Annex II to that directive, respectively in point 2(a) and (c) and in point 10(d).

97 Consequently, Directive 85/337 was applicable to the first two phases of construction of the wind farm in so far as they involved specifically the carrying out of work on projects referred to in Annex II to that directive.

98 It follows that Ireland was bound to subject the work on the projects to an impact assessment if they were likely to have significant effects on the environment, by virtue, inter alia, of their nature, size or location (see, to that effect, Case C-72/95 *Kraaijeveld and Others* [1996] ECR I-5403, paragraph 50, and Case C-2/07 *Abraham and Others* [2008] ECR I-1197, paragraph 37).

99 However, Ireland states that the competent authorities took the view that Annex II to Directive 85/337 was not applicable, since the ancillary works of peat extraction and road construction were minor aspects of the project of wind farm construction itself.

100 The competent authorities therefore considered that there was no need either to investigate whether the intended projects were likely to have significant effects on the environment or, accordingly, to conduct an environmental impact assessment meeting the requirements of Directive 85/337 prior to granting the consents.

101 However, the fact that the abovementioned projects falling under Annex II to that directive may have been of secondary importance vis-à-vis the wind farm construction project taken as a whole did not mean that, by virtue of that fact alone, those projects were not likely to have significant effects on the environment.

102 The intended projects of peat and mineral extraction and road construction were not insignificant in terms of scale by comparison with the overall area of the wind farm project which covered 200 hectares of peat bog and which was the largest project of its kind in Ireland, and they were moreover essential both to the installation of the turbines and to the progress of the construction works as a whole. In addition, those works were carried out on the slopes of Cashlaundrumlahan Mountain, where there are layers of peat up to 5.5 metres in depth, largely covered by plantation forestry.

103 It follows from those factors, which are not disputed by Ireland, that the location and size of the projects of peat and mineral extraction and road construction, and the proximity of the site to a river, all constitute specific characteristics which demonstrate that those projects, which were inseparable from the installation of 46 wind turbines, had to be regarded as likely to have significant effects on the environment and, accordingly, had to be subject to an assessment of their effects on the environment.

104 The purpose of carrying out an environmental impact assessment in conformity with the requirements of Directive 85/337 is to identify, describe and assess in an appropriate manner the direct and indirect effects of a project on factors such as fauna and flora, soil and water and the interaction of those factors. In the present case, the environmental impact statements supplied by the developer had certain deficiencies and did not examine, in particular, the question of soil stability, although that is fundamental when excavation is intended.

105 Consequently, by failing to take all measures necessary to ensure that the grant of development consents relating to the first two phases of construction of the wind farm was preceded by an environmental impact assessment in conformity with Articles 5 to 10 of Directive 85/337 and by merely attaching to the applications for consent environmental impact statements which did not satisfy those requirements, Ireland has failed to fulfil its obligations under that directive.

106 Secondly, as regards the application for consent relating to the third phase of construction of the wind farm, submitted on 5 October 2000, and the application for consent to alter the first two originally authorised phases of construction, lodged on 20 June 2002, the complaint must be considered in the light of Directive 85/337 as amended, since the applications for consent concerned were submitted after 14 March 1999.

107 It is not disputed, first, that the competent authorities gave their approval to the change in the type of wind turbines originally planned without requiring an

environmental impact assessment in conformity with Directive 85/337 as amended and, secondly, that the consent given for the third phase of construction was also not accompanied by such an assessment. In addition, such an assessment did not precede the deforestation authorised in May 2003, contrary to the requirements of the Irish legislation.

108 However, point 3(i) of Annex II to Directive 85/337 as amended refers to installations for the harnessing of wind power for energy production (wind farms) and point 13 of that annex refers to any change or extension of projects listed in Annex II, already authorised, executed or in the process of being executed, which may have significant adverse effects on the environment.

109 In addition, the relevant selection criteria in Annex III to Directive 85/337 as amended, which are applicable to the projects listed in Annex II and are referred to in Article 4(3) of that directive, include the risk of accidents having regard inter alia to the technologies used. Noteworthy among those criteria is the environmental sensitivity of the geographical area, which must be considered having regard, inter alia, to 'the absorption capacity of the natural environment', paying particular attention to mountain and forest areas.

110 Since the installation of 25 new turbines, the construction of new service roadways and the change in the type of wind turbines initially authorised, which was intended to increase the production of electricity, are projects which are referred to in Annex II to Directive 85/337 as amended and which were likely, having regard to the specific features of the site noted in paragraph 102 of this judgment and the criteria referred to in the preceding paragraph of this judgment, to have significant effects on the environment, they should, before being authorised, have been subject to a requirement for development consent and to an assessment of their effects on the environment, in conformity with the conditions laid down in Articles 5 to 10 of Directive 85/337 as amended.

111 Consequently, by failing to take all measures necessary to ensure that the grant of the amending consents and the consent relating to the third phase of construction of the wind farm was preceded by such an assessment, and by merely attaching to the applications for consent environmental impact statements which did not satisfy those requirements, Ireland has failed to fulfil its obligations under Directive 85/337 as amended.

112 It follows from the foregoing that, by failing to take all measures necessary to ensure that the development consents given for, and the execution of, wind farm developments and associated works at Derrybrien, County Galway, were preceded by an assessment with regard to their environmental effects, in accordance with Articles 5 to 10 of Directive 85/337 either before or after amendment by Directive 97/11, Ireland has failed to fulfil its obligations under Articles 2, 4 and 5 to 10 of that directive.

Costs

113 Under Article 69(2) of the Rules of Procedure, the unsuccessful party is to be ordered to pay the costs if they have been applied for in the successful party's pleadings. Since the Commission has applied for costs to be awarded against Ireland and the latter has been unsuccessful, Ireland must be ordered to pay the costs.

On those grounds, the Court (Second Chamber) hereby:

1. **Declares that, by failing to adopt all measures necessary to ensure that:**

   — **projects which are within the scope of Council Directive 85/337/EEC of 27 June 1985 on the assessment of the effects of certain public and private projects on the environment either before or after amendment by Council Directive 97/11/EC of 3 March 1997 are, before they are executed in whole or in part, first, considered with regard to the need for an environmental impact assessment and, secondly, where those projects are likely to have significant effects on the environment by virtue of their nature, size or location, that they are made subject to an assessment with regard to their effects in accordance with Articles 5 to 10 of Directive 85/337, and**

   — **the development consents given for, and the execution of, wind farm developments and associated works at Derrybrien, County Galway, were preceded by an assessment with regard to their environmental effects, in accordance with Articles 5 to 10 of Directive 85/337 either before or after amendment by Directive 97/11,**

   Ireland has failed to fulfil its obligations under Articles 2, 4 and 5 to 10 of that directive;

2. **Orders Ireland to pay the costs.**

[Signatures]

Appendix 2

Appendix 2

СЪД НА ЕВРОПЕЙСКИЯ СЪЮЗ
TRIBUNAL DE JUSTICIA DE LA UNIÓN EUROPEA
SOUDNÍ DVŮR EVROPSKÉ UNIE
DEN EUROPÆISKE UNIONS DOMSTOL
GERICHTSHOF DER EUROPÄISCHEN UNION
EUROOPA LIIDU KOHUS
ΔΙΚΑΣΤΗΡΙΟ ΤΗΣ ΕΥΡΩΠΑΪΚΗΣ ΕΝΩΣΗΣ
COURT OF JUSTICE OF THE EUROPEAN UNION
COUR DE JUSTICE DE L'UNION EUROPÉENNE
CÚIRT BHREITHIÚNAIS AN AONTAIS EORPAIGH
SUD EUROPSKE UNIJE
CORTE DI GIUSTIZIA DELL'UNIONE EUROPEA

CVRIA

LUXEMBOURG

EIROPAS SAVIENĪBAS TIESA
EUROPOS SĄJUNGOS TEISINGUMO TEISMAS
AZ EURÓPAI UNIÓ BÍRÓSÁGA
IL-QORTI TAL-ĠUSTIZZJA TAL-UNJONI EWROPEA
HOF VAN JUSTITIE VAN DE EUROPESE UNIE
TRYBUNAŁ SPRAWIEDLIWOŚCI UNII EUROPEJSKIEJ
TRIBUNAL DE JUSTIÇA DA UNIÃO EUROPEIA
CURTEA DE JUSTIȚIE A UNIUNII EUROPENE
SÚDNY DVOR EURÓPSKEJ ÚNIE
SODIŠČE EVROPSKE UNIJE
EUROOPAN UNIONIN TUOMIOISTUIN
EUROPEISKA UNIONENS DOMSTOL

JUDGMENT OF THE COURT (Grand Chamber)

12 November 2019 *

(Failure of a Member State to fulfil obligations — Judgment of the Court establishing a failure to fulfil obligations — Non-compliance — Directive 85/337/EEC — Consent for, and construction of, a wind farm — Project likely to have significant effects on the environment — Absence of a prior environmental impact assessment — Obligation to regularise — Article 260(2) TFEU — Application for an order to pay a penalty payment and a lump sum)

In Case C-261/18,

ACTION under Article 260(2) TFEU for failure to fulfil obligations, brought on 13 April 2018,

European Commission, represented by M. Noll-Ehlers and J. Tomkin, acting as Agents,

applicant,

v

Ireland, represented by M. Browne, G. Hodge and A. Joyce, acting as Agents, and by J. Connolly and G. Simons, Senior Counsel, and G. Gilmore, Barrister-at-Law,

defendant,

THE COURT (Grand Chamber),

composed of K. Lenaerts, President, R. Silva de Lapuerta, Vice-President, J.-C. Bonichot (Rapporteur), A. Arabadjiev, A. Prechal, M. Safjan and S. Rodin, Presidents of Chambers, L. Bay Larsen, T. von Danwitz, C. Toader, F. Biltgen, K. Jürimäe and C. Lycourgos, Judges,

* Language of the case: English.

JUDGMENT OF THE COURT (Grand Chamber)

12 November 2019 *

(Failure of a Member State to fulfil obligations — Judgment of the Court establishing a failure to fulfil obligations — Non-compliance — Directive 85/337/EEC — Consent for, and construction of, a wind farm — Project likely to have significant effects on the environment — Absence of a prior environmental impact assessment — Obligation to regularise — Article 260(2) TFEU — Application for an order to pay a penalty payment and a lump sum)

In Case C-261/18,

ACTION under Article 260(2) TFEU for failure to fulfil obligations, brought on 13 April 2018,

European Commission, represented by M. Noll-Ehlers and J. Tomkin, acting as Agents,

applicant,

v

Ireland, represented by M. Browne, G. Hodge and A. Joyce, acting as Agents, and by J. Connolly and C. Simons, Senior Counsel, and G. Gilmore, Barrister-at-Law,

defendant,

THE COURT (Grand Chamber),

composed of K. Lenaerts, President, R. Silva de Lapuerta, Vice-President, J.-C. Bonichot (Rapporteur), A. Arabadjiev, A. Prechal, M. Safjan and S. Rodin, Presidents of Chambers, L. Bay Larsen, T. von Danwitz, C. Toader, F. Biltgen, K. Jürimäe and C. Lycourgos, Judges,

Advocate General: G. Pitruzzella,

Registrar: R. Şereş, administrator,

having regard to the written procedure and further to the hearing on 1 April 2019,

after hearing the Opinion of the Advocate General at the sitting on 13 June 2019,

gives the following

Judgment

1 By its application, the European Commission claims that the Court should:

- declare that, by failing to take the necessary measures to comply with the judgment of 3 July 2008, *Commission* v *Ireland* (C-215/06, EU:C:2008:380) as regards the second indent of point 1 of the operative part thereto, Ireland has failed to fulfil its obligations under Article 260 TFEU;
- order Ireland to pay the Commission a lump sum of EUR 1 343.20 multiplied by the number of days between the delivery of the judgment of 3 July 2008, *Commission* v *Ireland* (C-215/06, EU:C:2008:380) and, either the date of compliance by Ireland with that judgment, or the date of the judgment delivered in the present case if that date is sooner than the date of compliance with the judgment of 3 July 2008, *Commission* v *Ireland* (C-215/06, EU:C:2008:380), with a minimum lump sum of EUR 1 685 000;
- order Ireland to pay the Commission a penalty payment of EUR 12 264 per day from the date of the judgment delivered in the present case to the date of compliance by Ireland with the judgment of 3 July 2008, *Commission* v *Ireland* (C-215/06, EU:C:2008:380); and
- order Ireland to pay the costs.

Legal context

Directive 85/337/EEC before amendment by Directive 97/11

2 Article 2(1),(2) and (3), first subparagraph, of Council Directive 85/337/EEC of 27 June 1985 on the assessment of the effects of certain public and private projects on the environment (OJ 1985 L 175, p. 40) provided:

'1. Member States shall adopt all measures necessary to ensure that, before consent is given, projects likely to have significant effects on the environment by virtue inter alia, of their nature, size or location are made subject to an assessment with regard to their effects.

These projects are defined in Article 4.

2. The environmental impact assessment may be integrated into the existing procedures for consent to projects in the Member States, or, failing this, into other procedures or into procedures to be established to comply with the aims of this Directive.

3. Member States may, in exceptional cases, exempt a specific project in whole or in part from the provisions laid down in this Directive.'

3 Article 3 of that directive provided:

'The environmental impact assessment will identify, describe and assess in an appropriate manner, in the light of each individual case and in accordance with the Articles 4 to 11, the direct and indirect effects of a project on the following factors:

– human beings, fauna and flora,

– soil, water, air, climate and the landscape,

– the inter-action between the factors mentioned in the first and second indents,

– material assets and the cultural heritage.'

4 Article 4 of that directive was worded as follows:

'1. Subject to Article 2(3), projects of the classes listed in Annex I shall be made subject to an assessment in accordance with Articles 5 to 10.

2. Projects of the classes listed in Annex II shall be made subject to an assessment, in accordance with Articles 5 to 10, where Member States consider that their characteristics so require.

To this end Member States may inter alia specify certain types of projects as being subject to an assessment or may establish the criteria and/or thresholds necessary to determine which of the projects of the classes listed in Annex II are to be subject to an assessment in accordance with Articles 5 to 10.'

5 Article 5 of Directive 85/337 provided:

'1. In the case of projects which, pursuant to Article 4, must be subjected to an environmental impact assessment in accordance with Articles 5 to 10, Member States shall adopt the necessary measures to ensure that the developer supplies in an appropriate form the information specified in Annex III inasmuch as:

(a) the Member States consider that the information is relevant to a given stage of the consent procedure and to the specific characteristics of a particular

project or type of project and of the environmental features likely to be affected;

(b) the Member States consider that a developer may reasonably be required to compile this information having regard inter alia to current knowledge and methods of assessment.

2. The information to be provided by the developer in accordance with paragraph 1 shall include at least:

– a description of the project comprising information on the site, design and size of the project,

– a description of the measures envisaged in order to avoid, reduce and, if possible, remedy significant adverse effects,

– the data required to identify and assess the main effects which the project is likely to have on the environment,

– a non-technical summary of the information mentioned in indents 1 to 3.

3. Where they consider it necessary, Member States shall ensure that any authorities with relevant information in their possession make this information available to the developer.'

6 Article 6 of Directive 85/337 was worded as follows:

'1. Member States shall take the measures necessary to ensure that the authorities likely to be concerned by the project by reason of their specific environmental responsibilities are given an opportunity to express their opinion on the request for development consent. Member States shall designate the authorities to be consulted for this purpose in general terms or in each case when the request for consent is made. The information gathered pursuant to Article 5 shall be forwarded to these authorities. Detailed arrangements for consultation shall be laid down by the Member States.

2. Member States shall ensure that:

– any request for development consent and any information gathered pursuant to Article 5 are made available to the public,

– the public concerned is given the opportunity to express an opinion before the project is initiated.

...'

7 Article 7 of that directive provided:

'Where a Member State is aware that a project is likely to have significant effects on the environment in another Member State or where a Member State likely to be significantly affected so requests, the Member State in whose territory the project is intended to be carried out shall forward the information gathered pursuant to Article 5 to the other Member State at the same time as it makes it available to its own nationals. Such information shall serve as a basis for any consultations necessary in the framework of the bilateral relations between two Member States on a reciprocal and equivalent basis.'

8 Under Article 8 of Directive 85/337:

'Information gathered pursuant to Articles 5, 6 and 7 must be taken into consideration in the development consent procedure.'

9 Article 9 of that directive was worded as follows:

'When a decision has been taken, the competent authority or authorities shall inform the public concerned of:

– the content of the decision and any conditions attached thereto,

– the reasons and considerations on which the decision is based where the Member States' legislation so provides.

The detailed arrangements for such information shall be determined by the Member States.

If another Member State has been informed pursuant to Article 7, it will also be informed of the decision in question.'

10 Article 10 of Directive 85/337 provided:

'The provisions of this Directive shall not affect the obligation on the competent authorities to respect the limitations imposed by national regulations and administrative provisions and accepted legal practices with regard to industrial and commercial secrecy and the safeguarding of the public interest.

Where Article 7 applies, the transmission of information to another Member State and the reception of information by another Member State shall be subject to the limitations in force in the Member State in which the project is proposed.'

11 Annex II to Directive 85/337 listed the projects subject to Article 4(2) of that directive, namely those for which an environmental impact assessment was necessary only where the Member States considered that their characteristics so required. The projects referred to in point 2(a) of that annex were accordingly for the extraction of peat, and in point 2(c) of that annex, for the extraction of minerals other than metalliferous and energy-producing minerals, such as marble, sand, gravel, shale, salt, phosphates and potash.

Directive 85/337 following amendment by Directive 97/11

12 Article 2(1),(2) and (3), first subparagraph, of Directive 85/337/EEC, as amended by Council Directive 97/11/EC of 3 March 1997 (OJ 1997 L 73, p. 5) provides:

'1. Member States shall adopt all measures necessary to ensure that, before consent is given, projects likely to have significant effects on the environment by virtue, inter alia, of their nature, size or location are made subject to a requirement for development consent and an assessment with regard to their effects. These projects are defined in Article 4.

2. The environmental impact assessment may be integrated into the existing procedures for consent to projects in the Member States, or, failing this, into other procedures or into procedures to be established to comply with the aims of this Directive.

...

3. Without prejudice to Article 7, Member States may, in exceptional cases, exempt a specific project in whole or in part from the provisions laid down in this Directive.'

13 Article 3 of that directive provides:

'The environmental impact assessment shall identify, describe and assess in an appropriate manner, in the light of each individual case and in accordance with Articles 4 to 11, the direct and indirect effects of a project on the following factors:

– human beings, fauna and flora;

– soil, water, air, climate and the landscape;

– material assets and the cultural heritage;

– the interaction between the factors mentioned in the first, second and third indents.'

14 Article 4 of that directive provides:

'1. Subject to Article 2(3), projects listed in Annex I shall be made subject to an assessment in accordance with Articles 5 to 10.

2. Subject to Article 2(3), for projects listed in Annex II, the Member States shall determine through:

(a) a case-by-case examination,

or

Directive 85/337 following amendment by Directive 97/11

12 Article 2(1),(2) and (3), first subparagraph, of Directive 85/337/EEC, as amended by Council Directive 97/11/EC of 3 March 1997 (OJ 1997 L 73, p. 5) provides:

'1. Member States shall adopt all measures necessary to ensure that, before consent is given, projects likely to have significant effects on the environment by virtue, inter alia, of their nature, size or location are made subject to a requirement for development consent and an assessment with regard to their effects. These projects are defined in Article 4.

2. The environmental impact assessment may be integrated into the existing procedures for consent to projects in the Member States, or, failing this, into other procedures or into procedures to be established to comply with the aims of this Directive.

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– soil, water, air, climate and the landscape;

– material assets and the cultural heritage;

– the interaction between the factors mentioned in the first, second and third indents.'

14 Article 4 of that directive provides:

'1. Subject to Article 2(3), projects listed in Annex I shall be made subject to an assessment in accordance with Articles 5 to 10.

2. Subject to Article 2(3), for projects listed in Annex II, the Member States shall determine through:

(a) a case-by-case examination,

or

(b) thresholds or criteria set by the Member State,

whether the project shall be made subject to an assessment in accordance with Articles 5 to 10.

Member States may decide to apply both procedures referred to in (a) and (b).

3. When a case-by-case examination is carried out or thresholds or criteria are set for the purpose of paragraph 2, the relevant selection criteria set out in Annex III shall be taken into account.

4. Member States shall ensure that the determination made by the competent authorities under paragraph 2 is made available to the public.'

15 Point 3(i) of Annex II to that directive refers to installations for the harnessing of wind power for energy production (wind farms).

16 Pursuant to point 13 of Annex II, any change or extension of projects listed in Annex I or Annex II, already authorised, executed or in the process of being executed, which may have significant adverse effects on the environment, must be regarded as a project falling within the scope of Article 4(2) of Directive 85/337.

17 Annex III to Directive 85/337, relating to the selection criteria referred to in Article 4(3) of that directive, states that the characteristics of projects must be considered in relation, inter alia, to pollution and nuisances, and to the risk of accidents having regard in particular to technologies used. That annex also states that the environmental sensitivity of geographical areas likely to be affected by projects must be considered having regard, inter alia, to the absorption capacity of the natural environment, paying particular attention to certain areas, including mountain and forest areas.

The judgment of 3 July 2008, *Commission* v *Ireland* (C-215/06, EU:C:2008:380)

18 In its judgment of 3 July 2008, *Commission* v *Ireland* (C-215/06, EU:C:2008:380), the Court held that, by failing to adopt all measures necessary to ensure that:

– projects which are within the scope of Directive 85/337, either before or after amendment by Council Directive 97/11 ('Directive 85/337') are, before they are executed in whole or in part, first, considered with regard to the need for an environmental impact assessment and, secondly, where those projects are likely to have significant effects on the environment by virtue of their nature, size or location, that they are made subject to an assessment with regard to their effects in accordance with Articles 5 to 10 of Directive 85/337, and

– the development consents given for, and the execution of, wind farm developments and associated works at Derrybrien, County Galway (Ireland), were preceded by an assessment with regard to their environmental effects, in accordance with Articles 5 to 10 of that directive,

Ireland failed to fulfil its obligations under Articles 2, 4 and 5 to 10 of Directive 85/337.

19 As regards the second complaint relating to the absence of an assessment of the effects of the wind farm and the associated works at Derrybrien ('the wind farm'), the Court concluded that there was a failure to fulfil obligations on the grounds set out in paragraphs 94 to 111 of the judgment of 3 July 2008, *Commission* v *Ireland* (C-215/06, EU:C:2008:380).

20 In particular, as regards the first two phases of construction of the wind farm project, the Court stated, in paragraph 98 of that judgment, that Ireland was bound to subject the projects relating to that construction to an impact assessment if they were likely to have significant effects on the environment, by virtue, inter alia, of their nature, size or location.

21 In that regard, the Court held, in paragraph 103 of that judgment, that the location and size of the projects of peat and mineral extraction and road construction, and the proximity of the site to a river, constituted specific characteristics which demonstrated that those projects, which were inseparable from the installation of 46 wind turbines, were likely to have significant effects on the environment and, accordingly, had to be subject to an assessment of their effects on the environment.

22 In addition, as regards the application for consent relating to the third phase of construction of the wind farm and for alteration of the first two phases of construction originally authorised, the Court found, in paragraph 110 of that judgment, that since the installation of 25 new turbines, the construction of new service roadways and the change in the type of wind turbines initially authorised — which was intended to increase the production of electricity — were projects which were likely to have significant effects on the environment, they should, before being authorised, have therefore been subject to a requirement for development consent and to an assessment of their effects on the environment, in conformity with the conditions laid down in Articles 5 to 10 of Directive 85/337.

Pre-litigation procedure and proceedings before the Court

23 Following the delivery of the judgment of 3 July 2008, *Commission* v *Ireland* (C-215/06, EU:C:2008:380), the Commission, by letter dated 15 July 2008, requested Ireland to provide it, within 2 months of the date of that judgment, with information on the measures taken in order to comply with the terms of that judgment. By letter dated 3 September 2008, Ireland confirmed in particular that it fully accepted the judgment and that an updated environmental impact

assessment, in compliance with Directive 85/337, was anticipated before the end of 2008.

24 By letters of 10 March and 17 April 2009, and further to a meeting with the Commission, Ireland informed the latter that it was drafting a bill in order to introduce a regularisation procedure which, in exceptional cases, would allow for consents granted in breach of Directive 85/337 to be regularised through the grant of 'substitute consent' and that, in accordance with that procedure, the wind farm operator would apply for such consent.

25 On 26 June 2009, the Commission sent a letter of formal notice to that Member State, in which it stated, first, that it had received only a preliminary outline of the legislation to be enacted by Ireland in order to ensure compliance with the judgment of 3 July 2008, *Commission* v *Ireland* (C-215/06, EU:C:2008:380), and, secondly, that it was still awaiting information on the envisaged assessment of the wind farm's effects on the environment. On 9 September 2009, Ireland replied to that letter of formal notice, confirming, first, that the legislative change introducing the substitute consent procedure would shortly be enacted and that the wind farm operator had agreed in principle to apply for substitute consent.

26 On 22 March 2010, the Commission sent a further letter of formal notice to Ireland requesting it to submit observations to the Commission within 2 months of receipt of that letter. Ireland replied by letters dated 18 May 2010, 22 July 2010 and 13 September 2010. In the letter of 13 September 2010, the Irish authorities informed the Commission of the enactment in July 2010 of the Planning and Development (Amendment) Act 2010 ('the PDAA'). Part XA of the PDAA, in particular Sections 177B and 177C thereto, provides for a regularisation procedure for consents granted in breach of the obligation to conduct an environmental impact assessment.

27 Following further contacts between the Irish authorities and the Commission and the notification by Ireland of additional legislative measures adopted between 2010 and 2012, the Commission, by letter of 19 September 2012, requested Ireland to inform it in particular whether the developer of the wind farm would be subject to that regularisation procedure.

28 By letter dated 13 October 2012, Ireland stated that the wind farm operator, wholly owned by a semi-public sector company, was refusing to apply the regularisation procedure provided for in Part XA of the PDAA and that neither national nor EU law made provision for its application to be imposed. In particular, EU law, it was claimed, did not require the consents granted for the construction of the wind farm, which had become final, to be called into question and the principles of legal certainty and of the non-retroactive effect of laws, as well as the case-law of the Court on the procedural autonomy of the Member States, precluded the withdrawal of those consents.

29 By letter of 16 December 2013, the Irish authorities reported to the Commission that the wind farm operator had indicated its willingness to undertake an unofficial, that is non-statutory, environmental impact assessment in respect of that wind farm which would nevertheless conform to the requirements of Directive 85/337.

30 In the course of 2014, Ireland provided the Commission with a concept document which set out a road map for the non-statutory environmental impact assessment of the wind farm. Ireland also agreed, at a meeting with the Commission held on 13 May 2014, to send it the draft memorandum of understanding which would be concluded between the wind farm operator and the Irish Minister for Environment providing for an agreement on the carrying out of a non-statutory environmental review. Such a draft was provided to the Commission on 11 March 2015, with the Irish authorities communicating a further version of that draft on 7 March 2016.

31 The Commission stated on several occasions that those documents did not enable Ireland to fulfil its obligations. Following a meeting held on 29 November 2016, the Commission's services informed the Irish authorities by email on 15 December 2016 that the final text of the signed memorandum of understanding should reach the Commission by the end of 2016, failing which the Commission would refer the matter back to the Court in early 2017.

32 On 22 December 2016, Ireland sent the Commission a new version of the concept document and a scoping document dated 2 December 2015. In the covering letter, the Irish authorities stated that the two documents were due to be signed at the end of January 2017.

33 Following further exchanges with the Irish authorities, the Commission informed Ireland, by letter of 26 January 2018, that, notwithstanding the signature of the concept document, it considered that the failure to fulfil the obligation of complying fully with the judgment of 3 July 2008, *Commission* v *Ireland* (C-215/06, EU:C:2008:380) persisted. Nine years after that judgment was delivered, no substantive progress had been made as regards the environmental impact assessment of the wind farm.

34 By letter of 1 February 2018, Ireland acknowledged that discussions on resolution of the case had already been ongoing for a number of years. In that letter, Ireland nonetheless maintained that it had awaited, before taking the measures necessary to comply, the Commission's observations on the documents that Ireland had sent it by letter of 22 December 2016.

35 Since it considered that the second indent of point 1 of the operative part of the judgment of 3 July 2008, *Commission* v *Ireland* (C-215/06, EU:C:2008:380) had still not been complied with, the Commission brought the present action.

36 Following the closure of the written part of the procedure in the present case, the Commission informed the Court, by letter lodged at the Registry on 1 April 2019, of a letter from the Irish authorities which it had received on 29 March 2019 ('the

29 By letter of 16 December 2013, the Irish authorities reported to the Commission that the wind farm operator had indicated its willingness to undertake an unofficial, that is non-statutory, environmental impact assessment in respect of that wind farm which would nevertheless conform to the requirements of Directive 85/337.

30 In the course of 2014, Ireland provided the Commission with a concept document which set out a road map for the non-statutory environmental impact assessment of the wind farm. Ireland also agreed, at a meeting with the Commission held on 13 May 2014, to send it the draft memorandum of understanding which would be concluded between the wind farm operator and the Irish Minister for Environment providing for an agreement on the carrying out of a non-statutory environmental review. Such a draft was provided to the Commission on 11 March 2015, with the Irish authorities communicating a further version of that draft on 7 March 2016.

31 The Commission stated on several occasions that those documents did not enable Ireland to fulfil its obligations. Following a meeting held on 29 November 2016, the Commission's services informed the Irish authorities by email on 15 December 2016 that the final text of the signed memorandum of understanding should reach the Commission by the end of 2016, failing which the Commission would refer the matter back to the Court in early 2017.

32 On 22 December 2016, Ireland sent the Commission a new version of the concept document and a scoping document dated 2 December 2015. In the covering letter, the Irish authorities stated that the two documents were due to be signed at the end of January 2017.

33 Following further exchanges with the Irish authorities, the Commission informed Ireland, by letter of 26 January 2018, that, notwithstanding the signature of the concept document, it considered that the failure to fulfil the obligation of complying fully with the judgment of 3 July 2008, Commission v Ireland (C-215/06, EU:C:2008:380) persisted. Nine years after that judgment was delivered, no substantive progress had been made as regards the environmental impact assessment of the wind farm.

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36 Following the closure of the written part of the procedure in the present case, the Commission informed the Court, by letter lodged at the Registry on 1 April 2019, of a letter from the Irish authorities which it had received on 29 March 2019 ('the

letter of 29 March 2019') from which it is apparent that the wind farm operator had agreed that it would cooperate in a substitute consent procedure, to be initiated under the PDAA, 'as soon as possible, so as to ensure [that an *ex post* environmental impact assessment] is carried out.' On 1 April 2019, the Irish authorities also sent that letter to the Court Registry.

The failure to fulfil obligations

Arguments of the parties

37 The Commission notes that, in its judgment of 3 July 2008, *Commission* v *Ireland* (C-215/06, EU:C:2008:380), the Court held, in particular, that Ireland had failed to fulfil its obligations under Directive 85/337 in that it had failed to take all measures necessary to ensure that the development consents given for, and the execution of, the wind farm developments and associated works were preceded by an environmental impact assessment. According to the Commission, Ireland does not deny that it is under an obligation to take positive steps to address that failure.

38 The Commission submits that it was not for the Court to determine, in that judgment, the specific measures enabling the failure to fulfil obligations declared to be remedied. It is apparent, on the other hand, from the case-law of the Court (judgments of 7 January 2004, *Wells*, C-201/02, EU:C:2004:12, paragraphs 64 and 65, and of 28 February 2012, *Inter-Environnement Wallonie and Terre wallonne*, C-41/11, EU:C:2012:103, paragraphs 42, 43 and 46) that Ireland is required to eliminate the unlawful consequences of the failure to carry out an environmental impact assessment of the wind farm and to take all measures necessary to remedy that failure. In any event, mere preparatory steps, such as those taken in the present case, are insufficient.

39 In support of its arguments, the Commission also relies on the judgments of 26 July 2017, *Comune di Corridonia and Others* (C-196/16 and C-197/16, EU:C:2017:589, paragraph 35) and of 28 February 2018, *Comune di Castelbellino* (C-117/17, EU:C:2018:129, paragraph 30), which confirm that the competent national authorities are under an obligation to take all measures necessary, within the sphere of their competence, to remedy the failure to carry out an environmental impact assessment, for example by revoking or suspending consent already granted, in order to carry out such an assessment. EU law does not preclude regularisation through the conducting of an environmental impact assessment, subject to certain conditions.

40 During the pre-litigation procedure, Ireland made two different proposals, referred to in paragraphs 24 and 29 above, in order to remedy the failure to assess the wind farm's impact without, however, giving concrete effect to them.

41 First, Ireland referred to the possibility of carrying out a non-statutory assessment. However, no specific measure to implement it has been adopted.

42 Secondly, the Commission submits that Ireland amended its legislation in order to establish a procedure that would allow for the regularisation of consents granted in breach of the obligation to conduct an environmental impact assessment under EU law. However, Ireland now maintains that that procedure, provided for in Part XA of the PDAA, could be applied only prospectively and that, notwithstanding the fact that the wind farm operator is a wholly owned subsidiary of a semi-public sector company, it cannot be required to apply it.

43 The Commission submits, however, that Ireland is required to revoke or suspend the consents at issue and carry out an ex post remedial assessment, even if those measures affect the wind farm operator's vested rights. The possibility for a Member State to rely, in that regard, on the principle of procedural autonomy is, in accordance with the judgment of 17 November 2016, *Stadt Wiener Neustadt* (C-348/15, EU:C:2016:882, paragraph 40), limited by the principles of effectiveness and equivalence.

44 In addition, it is apparent from the judgment of 14 June 2007, *Medipac-Kazantzidis* (C-6/05, EU:C:2007:337, paragraph 43) that the wind farm operator is subject to the obligations arising from EU directives since it is a wholly owned subsidiary of an entity controlled by the public authorities.

45 Moreover, the Commission submits that the delay in complying with the judgment of 3 July 2008, *Commission* v *Ireland* (C-215/06, EU:C:2008:380), cannot be justified. In accordance with the case-law of the Court (judgment of 9 December 2008, *Commission* v *France*, C-121/07, EU:C:2008:695, paragraph 21), although Article 260 TFEU does not specify the period within which a judgment must be complied with, the process of compliance must be initiated at once and completed as soon as possible. In the present case, neither the complexity of the issues arising nor the alleged breakdown of communications between Ireland and the Commission at the end of 2016 can justify that Member State's failure to take action over a prolonged period. The Commission further notes that it had stated that December 2016 was the final deadline for complying with the judgment of 3 July 2008, *Commission* v *Ireland* (C-215/06, EU:C:2008:380).

46 In its reply, the Commission submits that Ireland has still not carried out, by way of regularisation, an environmental impact assessment of the wind farm. Consequently, Ireland has not taken the minimum steps required to comply with the judgment of 3 July 2008, *Commission* v *Ireland* (C-215/06, EU:C:2008:380).

47 Ireland contends that the Commission's action should be dismissed.

48 It contends that it is apparent from the judgment of 3 July 2008, *Commission* v *Ireland* (C-215/06, EU:C:2008:380) and the pleadings in the case giving rise to that judgment, that the two indents of point 1 of the operative part in that judgment related in fact to one and the same failure to fulfil obligations, namely the failure to transpose in full Directive 85/337. Consequently, apart from

transposing that directive, the adoption of specific measures as regards the wind farm was not necessary.

49 In addition, in its application, the Commission failed to identify the specific measures which it considers Ireland as being required to take in order to comply with the second indent of point 1 of the operative part of that judgment.

50 Furthermore, that same judgment did not set aside or invalidate the development consents granted between 1998 and 2003 for the wind farm's construction. Infringement proceedings pursuant to Article 226 EC (now Article 258 TFEU) cannot have any effect on the vested rights of third parties, in particular when those third parties are not heard in those proceedings.

51 As regards the procedures enabling a national administrative decision to be annulled, they fall within the procedural autonomy of the Member States. The judgment of 3 July 2008, *Commission* v *Ireland* (C-215/06, EU:C:2008:380, paragraph 59), confirms that an obligation to remedy a failure to carry out an environmental impact assessment is limited by the procedural framework applicable within each Member State. In Ireland, a development consent may only be set aside by the High Court, on a direct application to that end.

52 In that regard, it is apparent from the judgment of 17 November 2016, *Stadt Wiener Neustadt* (C-348/15, EU:C:2016:882), that, subject to compliance with certain conditions, Member States may establish time limits governing proceedings brought against decisions adopted in the field of town planning. Under Irish procedural law in force prior to the enactment of the PDAA, any challenge seeking to set aside a planning permission was subject to a two-month time limit. The PDAA itself set an eight-week time limit. Consequently, the consents granted for the wind farm's construction have become final.

53 Ireland contends that, accordingly, the situation of the present case may be distinguished from those of the cases giving rise to the judgments of 26 July 2017, *Comune di Corridonia and Others* (C-196/16 and C-197/16, EU:C:2017:589) and of 28 February 2018, *Comune di Castelbellino* (C-117/17, EU:C:2018:129) referred to by the Commission. It is apparent from the summary of the facts in those judgments that the development consents at issue were in fact annulled by a national court. It was in the course of the proceedings subsequent to those annulments, seeking the grant of fresh development consents for the projects concerned, that questions relating to the obligation to carry out an environmental impact assessment were raised.

54 The present case may also be distinguished from that which gave rise to the judgment of 7 January 2004, *Wells* (C-201/02, EU:C:2004:12), delivered in preliminary ruling proceedings in a dispute concerning a national permission which had been challenged within the time limits. The Court states in that judgment that it is for the national court to determine whether it is possible under domestic law for a consent already granted to be revoked or suspended. In

addition, in the judgment of 12 February 2008, *Kempter* (C-2/06, EU:C:2008:78), the Court confirmed that, where an administrative decision has become final, EU law does not require that a national authority be placed under an obligation, in principle, to reopen that decision.

55 Furthermore, where planning consents may no longer be subject to judicial review proceedings, the principles of the protection of legitimate expectations and of legal certainty and the property rights of the holders of planning permissions must be respected.

56 In the present case, the withdrawal of the consents granted, which have become final, would be contrary to the principle of legal certainty. Ireland is not, therefore, required to annul or withdraw them. A fortiori, nor is it required to carry out, *ex post facto*, an environmental impact assessment on the basis of the relevant provisions of the PDAA.

57 In the alternative, Ireland contends that it has now complied with the obligations stemming from the judgment of 3 July 2008, *Commission* v *Ireland* (C-215/06, EU:C:2008:380), in that it has taken steps to arrange for a non-statutory assessment to be carried out at Derrybrien. The history of the engagement between Ireland and the Commission, as detailed in the application, demonstrates that the Irish Government has acted in good faith in that regard.

58 In support of that argument, Ireland contends, in particular, that the Irish Government drew up a concept paper in agreement with the wind farm's developer. That document provides that the developer will have to prepare an environmental report, in accordance with the scoping document, which will have to include possible mitigation measures. That document also provides that the report will be subject to a form of public consultation process.

59 The initiation of such a process constitutes sufficient compliance with the judgment of 3 July 2008, *Commission* v *Ireland* (C-215/06, EU:C:2008:380), since, contrary to the full transposition of Directive 85/337, which fell entirely under the control of the Irish authorities, the implementation of the assessment of the effects of a project on the environment in fact requires the participation of third parties.

60 In the further alternative, Ireland contends that it will have complied with its obligations at the latest as of the date of any hearing before the Court in the present case.

61 In addition, the duration of the procedure necessary to implement the environmental impact assessment of the wind farm is linked to the lack of reaction from the Commission following the submission, on 22 December 2016, of a new version of the concept document intended to prepare for the environmental impact assessment of the wind farm to be carried out. The Irish authorities awaited the formal approval of that document. In any event, a Member State cannot be penalised for taking the time necessary to discern the appropriate measures, for

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the purposes of complying with a judgment of the Court, or for failing to identify them.

62 At the hearing, Ireland confirmed that it no longer envisaged carrying out a non-statutory environmental impact assessment in relation to the wind farm. As is apparent from the letter of 29 March 2019, it now maintains that the wind farm operator has agreed that it will cooperate in order for a regularisation procedure under Part XA of the PDAA to be initiated. In the context of that procedure, an environmental impact assessment in accordance with Directive 85/337 will be carried out as soon as possible.

63 In answer to the questions put by the Court at the hearing, Ireland stated that the formal agreement of the wind farm's operator was still lacking. In addition, it is not decided whether the latter would itself apply for substitute consent pursuant to Section 177 C of the PDAA, or whether, pursuant to Section 177 B of the PDAA, the competent authorities would themselves commence the regularisation procedure of their own initiative.

Findings of the Court

Preliminary observations

64 In the context of the present action, brought on the basis of Article 260(2) TFEU, the Commission submits that Ireland has not complied with the judgment of 3 July 2008, *Commission* v *Ireland* (C-215/06, EU:C:2008:380), as regards the second complaint only, in the second indent of point 1 of the operative part of that judgment. The Court held, in that regard, that by failing to adopt all measures necessary to ensure that the development consents given for, and the execution of, the developments and associated works at the wind farm were preceded by an environmental impact assessment, in accordance with Articles 5 to 10 of Directive 85/337, Ireland failed to fulfil its obligations under Articles 2, 4 and 5 to 10 of that directive.

The admissibility of the action

65 In so far as Ireland contends, in essence, that the Commission has failed to define the subject matter of its action and to identify the measures that are necessary in order to comply with the second indent of point 1 of the operative part of the judgment of 3 July 2008, *Commission* v *Ireland* (C-215/06, EU:C:2008:380), it must be found that it in fact contests the admissibility of the present action.

66 In that regard, the Commission submits, in its application, that, in order to comply with the second indent of point 1 of the operative part of the judgment of 3 July 2008, *Commission* v *Ireland* (C-215/06, EU:C:2008:380), Ireland should eliminate the unlawful consequences of the breach of the obligation to carry out a prior environmental impact assessment of the wind farm and initiate, to that end, a procedure to regularise the project in question. That procedure should include an

environmental impact assessment of that project in accordance with the requirements of Directive 85/337.

67 Consequently, Ireland is mistaken to complain that the Commission has failed to define the measures required to comply with the judgment of 3 July 2008, *Commission* v *Ireland* (C-215/06, EU:C:2008:380) and, for that reason, to complain that the Commission has failed to specify sufficiently the subject matter of its action.

68 It must, therefore, be concluded that Ireland's contentions are not capable of affecting the admissibility of the present action.

The substance

69 Ireland contends that the present action is unfounded, arguing that, beyond the transposition of Directive 85/337, the adoption of specific measures as regards the wind farm is unnecessary and that, in particular, it is impossible, under its national law, to withdraw the consents granted to the wind farm's operator, which have become final.

70 The Commission submits, on the other hand, that Ireland is required, as recalled in paragraph 66 above, to eliminate the unlawful consequences of the failure to fulfil obligations established and, in the context of a regularisation procedure, to carry out an environmental impact assessment of the wind farm in accordance with the requirements of Directive 85/337.

71 In those circumstances, it is necessary to examine the obligations on a Member State when a project has been authorised in breach of the obligation to carry out a prior environmental impact assessment under Directive 85/337, in particular where the consent was not challenged within the period prescribed by national law and has, therefore, become final in the national legal order.

72 In that regard, it should be borne in mind that, under Article 2(1) of Directive 85/337, projects likely to have significant effects on the environment, as referred to in Article 4 of that directive, read in conjunction with Annexes I or II thereto, must be made subject to an assessment with regard to such effects before consent is given (judgment of 7 January 2004, *Wells*, C-201/02, EU:C:2004:12, paragraph 42).

73 The requirement to undertake such an assessment in advance is justified by the fact that it is necessary for the competent authority to take effects on the environment into account at the earliest possible stage in all the technical planning and decision-making processes, the objective being to prevent the creation of pollution or nuisances at source rather than subsequently trying to deal with their effects (judgments of 3 July 2008, *Commission* v *Ireland*, C-215/06, EU:C:2008:380, paragraph 58, and of 26 July 2017, *Comune di Corridonia and Others*, C-196/16 and C-197/16, EU:C:2017:589, paragraph 33).

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74 However, Directive 85/337 does not contain provisions governing the consequences of a breach of that obligation to carry out a prior assessment (see, to that effect, judgment of 26 July 2017, *Comune di Corridonia and Others*, C-196/16 and C-197/16, EU:C:2017:589, paragraph 34).

75 Under the principle of sincere cooperation provided for in Article 4(3) TEU, Member States are nevertheless required to eliminate the unlawful consequences of that breach of EU law. That obligation applies to every organ of the Member State concerned and, in particular, to the national authorities which have the obligation to take all measures necessary, within the sphere of their competence, to remedy the failure to carry out an environmental impact assessment, for example by revoking or suspending consent already granted, in order to carry out such an assessment (see, to that effect, judgments of 7 January 2004, *Wells*, C-201/02, EU:C:2004:12, paragraph 64, and of 26 July 2017, *Comune di Corridonia and Others*, C-196/16 and C-197/16, EU:C:2017:589, paragraph 35).

76 As regards the possibility of regularising such an omission a posteriori, Directive 85/337 does not preclude national rules which, in certain cases, permit the regularisation of operations or measures which are unlawful in the light of EU law, provided that such a possibility does not offer the persons concerned the chance to circumvent the rules of EU law or to dispense with their application, and that it should remain the exception (judgment of 26 July 2017, *Comune di Corridonia and Others*, C-196/16 and C-197/16, EU:C:2017:589, paragraphs 37 and 38).

77 An assessment carried out in the context of such a regularisation procedure, after a plant has been constructed and has entered into operation cannot be confined to its future impact on the environment, but must also take into account its environmental impact from the time of its completion (see, to that effect, judgment of 26 July 2017, *Comune di Corridonia and Others*, C-196/16 and C-197/16, EU:C:2017:589, paragraph 41).

78 By contrast, Directive 85/337 precludes national legislation which allows the national authorities, where no exceptional circumstances are proved, to issue regularisation permission which has the same effects as those attached to a prior consent granted after an environmental impact assessment carried out in accordance with Article 2(1) and Article 4(1) and (2) of that directive (see, to that effect, judgments of 3 July 2008, *Commission* v *Ireland*, C-215/06, EU:C:2008:380, paragraph 61; of 17 November 2016, *Stadt Wiener Neustadt*, C-348/15, EU:C:2016:882, paragraph 37; and of 26 July 2017, *Comune di Corridonia and Others*, C-196/16 and C-197/16, EU:C:2017:589, paragraph 39).

79 Directive 85/337 also precludes a legislative measure, which would allow, without even requiring a later assessment and even where no exceptional circumstances are proved, a project which ought to have been subject to an environmental impact assessment, within the meaning of Article 2(1) of Directive 85/337, to be deemed to have been subject to such an assessment (see, to that effect, judgment of

17 November 2016, *Stadt Wiener Neustadt*, C-348/15, EU:C:2016:882, paragraph 38).

80 Similarly, Directive 85/337 precludes projects in respect of which the consent can no longer be subject to challenge before the courts, because the time limit for bringing proceedings laid down in national legislation has expired, from being purely and simply deemed to be lawfully authorised as regards the obligation to assess their effects on the environment (judgment of 17 November 2016, *Stadt Wiener Neustadt*, C-348/15, EU:C:2016:882, paragraph 43).

81 In the present case, it is not in dispute that, during a legislative reform in July 2010, Ireland introduced into its legislation a procedure for regularising projects which had been authorised in breach of the obligation to carry out an environmental impact assessment. It is apparent from the file before the Court that the detailed rules for that procedure were laid down in Part XA of the PDAA, the provisions of which were enacted in order to comply with the requirements flowing from the judgment of 3 July 2008, *Commission* v *Ireland* (C-215/06, EU:C:2008:380).

82 First, according to Section 177 B(1) and (2)(b) of Part XA of the PDAA, where, in particular, by 'a final judgment of … the Court of Justice of the European Union', it is held that a permission for a project for which an environmental impact assessment was required was unlawfully granted, the competent planning authority must give notice in writing directing the project manager to apply for substitute consent. Subsection (2)(c) of Section 177 B of Part XA of the PDAA states that the notice is to require the project manager to furnish a remedial environmental impact statement with the application.

83 Secondly, Section 177 C of Part XA of the PDAA enables, in those same circumstances, the manager of a project authorised in breach of the obligation to carry out a prior environmental impact assessment to apply itself for the regularisation procedure to be initiated. If its application is allowed, the manager must furnish, in accordance with Section 177 D(7)(b) of Part XA of the PDAA, a remedial environmental impact statement.

84 The fact remains that, as at the reference date for assessing whether there has been a failure to fulfil obligations under Article 260(2) TFEU, namely the expiry of the period prescribed in the letter of formal notice issued under that provision (see, to that effect, judgment of 11 December 2012, *Commission* v *Spain*, C-610/10, EU:C:2012:781, paragraph 67), that is to say, in accordance with the letter of formal notice of 22 March 2010 mentioned in paragraph 26 above, at the end of May 2010, Ireland had failed to carry out a new environmental impact assessment of the wind farm within the context of the regularisation of the consents at issue and thereby failed to have regard to the authority attaching to the judgment of 3 July 2008, *Commission* v *Ireland* (C-215/06, EU:C:2008:380), as regards the second indent of point 1 of the operative part thereto.

85 Ireland nonetheless argued, at the hearing, that, as regards the consents granted for the construction of the wind farm, it is not ultimately in a position to apply the regularisation procedure of its own initiative. After commencing that procedure pursuant to Section 177 B of Part XA of the PDAA, the local authorities that were responsible in that regard put an end to that procedure. Although those authorities are an emanation of the State, they are independent and therefore fall outside the Irish Government's control.

86 Similarly, Ireland contends that it could not require the wind farm operator to apply for substitute consent pursuant to Section 177 C of Part XA of the PDAA. Admittedly, that operator is a wholly owned subsidiary of a semi-public sector entity that is 90% owned by Ireland. However, the operator is independent as regards the daily management of its affairs.

87 Ireland also contends that the principles of legal certainty and of the protection of legitimate expectations preclude the revocation of an administrative decision, such as the consents at issue in the present case, which because of the expiry of the period for bringing an action, can no longer be the subject of a direct application to a court and has, therefore, become final.

88 Ireland's arguments must, however, be rejected.

89 First of all, the Court points out that, according to settled case-law, a Member State cannot plead provisions, practices or situations prevailing in its domestic legal order to justify failure to observe obligations arising under EU law (judgments of 2 December 2014, *Commission* v *Greece*, C-378/13, EU:C:2014:2405, paragraph 29, and of 24 January 2018, *Commission* v *Italy*, C-433/15, EU:C:2018:31, paragraph 56 and the case-law cited). It follows that Ireland, for the purposes of justifying the failure to comply with the obligations stemming from the judgment of 3 July 2008, *Commission* v *Ireland* (C-215/06, EU:C:2008:380), cannot rely on national provisions limiting the possibilities for commencing a regularisation procedure, such as Section 177 B and Section 177 C of Part XA of the PDAA, a procedure which it introduced into its national legislation specifically in order to ensure compliance with that judgment.

90 In any event, as regards the alleged impossibility for that Member State to require the competent local authorities to commence the regularisation procedure provided for by the Irish legislation, it must be borne in mind that, according to the case-law cited in paragraph 75 above, every organ of that Member State and, in particular, those local authorities are required to take all measures necessary, within the sphere of their competence, to remedy the failure to carry out an environmental impact assessment of the wind farm.

91 As regards, next, the wind farm operator's inaction, or even its refusal to initiate the regularisation procedure pursuant to Section 177 C of Part XA of the PDAA, it suffices to refer, *mutatis mutandis*, to the considerations set out in paragraph 89 above, since that operator is controlled by Ireland. Consequently, the operator

must be considered an emanation of that Member State on which, as the Commission rightly argued, the obligations arising from EU directives are binding (judgment of 14 June 2007, *Medipac — Kazantzidis*, C-6/05, EU:C:2007:337, paragraph 43 and the case-law cited).

92 As regards Ireland's argument based on the contention that the principle of legal certainty and the principle of the protection of legitimate expectations preclude the consents unlawfully granted to the wind farm's operator from being withdrawn, it must be borne in mind, first, that the infringement procedure is based on the objective finding that a Member State has failed to fulfil its obligations under the Treaty or secondary legislation and, secondly, that while the withdrawal of an unlawful measure must occur within a reasonable time and regard must be had to how far the person concerned might have been led to rely on the lawfulness of the measure, the fact remains that such withdrawal is, in principle, permitted (judgment of 4 May 2006, *Commission* v *United Kingdom*, C-508/03, EU:C:2006:287, paragraphs 67 and 68).

93 Ireland cannot, therefore, rely on legal certainty and legitimate expectations derived by the operator concerned from acquired rights in order to contest the consequences flowing from the objective finding that Ireland has failed to fulfil its obligations under Directive 85/337 with regard to assessment of the effects of certain projects on the environment (see, to that effect, judgment of 4 May 2006, *Commission* v *United Kingdom*, C-508/03, EU:C:2006:287, paragraph 69).

94 In any event, Ireland simply states that, after the expiry of the period of 2 months, or 8 weeks set by the PDAA, respectively, the consents at issue could no longer be the subject of a direct application to a court and cannot be called in question by the national authorities.

95 By its argument, Ireland fails to have regard, however, to the case-law of the Court referred to in paragraph 80 above, according to which projects in respect of which the consent can no longer be subject to challenge before the courts, because the time limit for bringing proceedings laid down in national legislation has expired, cannot be purely and simply deemed to be lawfully authorised as regards the obligation to assess their effects on the environment.

96 It must further be noted that while it is not precluded that an assessment carried out after the plant concerned has been constructed and has entered into operation, in order to remedy the failure to carry out an environmental impact assessment of that plant before the consents were granted, may result in those consents being withdrawn or amended, this is without prejudice to any right of an economic operator, which has acted in accordance with a Member State's legislation that has proven contrary to EU law, to bring against that State, pursuant to national rules, a claim for compensation for the damage sustained as a result of the State's actions or omissions.

97 In the light of the foregoing, it must be held that, by failing to take all measures necessary to comply with the second indent of point 1 of the operative part of the judgment of 3 July 2008, *Commission* v *Ireland* (C-215/06, EU:C:2008:380), Ireland has failed to fulfil its obligations under Article 260(1) TFEU.

The financial penalties

Arguments of the parties

98 Taking the view that Ireland has still not complied with the judgment of 3 July 2008, *Commission* v *Ireland* (C-215/06, EU:C:2008:380), the Commission claims that the Court should order Ireland to pay a lump sum of EUR 1 343.20 multiplied by the number of days between the delivery of that judgment and, either the date of compliance by Ireland with that judgment, or the date of the judgment delivered in the present case if that date is sooner than the date of compliance with the judgment of 3 July 2008, *Commission* v *Ireland* (C-215/06, EU:C:2008:380), with a minimum lump sum of EUR 1 685 000.

99 The Commission also claims that the Court should order Ireland to pay a penalty payment of EUR 12 264 per day from the date of the judgment delivered in the present case to the date of compliance by Ireland with the judgment of 3 July 2008, *Commission* v *Ireland* (C-215/06, EU:C:2008:380).

100 Referring to its communication SEC(2005) 1658 of 12 December 2005, entitled 'Application of Article [260 TFEU]', as updated by its communication of 15 December 2017, entitled 'Updating of data used to calculate lump sum and penalty payments to be proposed by the Commission to the [Court] in infringement proceedings' (OJ 2017 C 431, p. 3), the Commission proposes that the daily penalty payment be determined by multiplying a standard flat-rate amount of EUR 700 by a coefficient for seriousness of 2 on a scale of 1 to 20 and also by a coefficient for duration of 3, that is the maximum coefficient. The result obtained would be multiplied by an 'n' factor, set at 2.92 for Ireland. As regards the calculation of the lump sum, the flat-rate amount would be set at EUR 230 per day and should by multiplied by a coefficient for seriousness of 2 and an 'n' factor set at 2.92. The total obtained would be multiplied by the number of days during which the failure to fulfil obligations persists.

101 As regards the seriousness of the failure to fulfil obligations, the Commission submits that account must be taken of the objectives of an environmental impact assessment, such as that provided for by Directive 85/337, of the facts established by the Court in paragraphs 102 and 104 of the judgment of 3 July 2008, *Commission* v *Ireland* (C-215/06, EU:C:2008:380), and of the landslide, linked to the construction of the wind farm, which caused substantial environmental damage.

102 In addition, the Commission submits that cases brought before the Court show that Ireland has already infringed Directive 85/337 on several occasions. While Ireland has in the meantime proceeded to transpose that directive, the fact remains that, in the Commission's view, it has not made any progress such as to remedy the failure to fulfil obligations at issue, which has persisted over a particularly long period.

103 As regards the duration of the infringement, the Commission states that the adoption of regularisation measures is entirely Ireland's responsibility and does not depend on the Commission's opinion. Ireland ought to have adopted such measures as soon as possible.

104 Ireland contends that, in the present case, it has already complied with the judgment of 3 July 2008, *Commission* v *Ireland* (C-215/06, EU:C:2008:380), since it has taken the measures within its control in adopting a concept document providing for an environmental impact assessment of the wind farm by its operator.

105 The fact that a certain lapse of time was necessary in order to draw up that document does not constitute a failure to fulfil obligations, since consultation with the Commission was essential for the purposes of determining the content of that document.

106 In addition, the Commission's application fails to identify the measures whose adoption is required in order to comply with the second indent of point 1 of the operative part of the judgment of 3 July 2008, *Commission* v *Ireland* (C-215/06, EU:C:2008:380). The objective of setting a penalty payment is precisely to ensure compliance with that judgment.

107 In any event, the circumstances of the present case may be distinguished, on the ground referred to in paragraph 53 above, from those giving rise to the judgments of 26 July 2017, *Comune di Corridonia and Others* (C-196/16 and C-197/16, EU:C:2017:589) and of 28 February 2018, *Comune di Castelbellino* (C-117/17, EU:C:2018:129). If the Court held, however, that those judgments support the Commission's line of argument, they would mark a departure in the case-law in that area. Consequently, no penalty ought to accrue for any breach in the period before July 2017.

108 Ireland further observes that the Commission's communications are not binding upon the Court and that the Court is required to set an appropriate and proportionate penalty. The present case is unique and anomalous, which the Court must take into account when it determines the amount of the financial penalties.

109 As regards the seriousness of the infringement, Ireland contends that the minimum coefficient should apply, in particular in the light of the full transposition of Directive 85/337, the good faith shown by Ireland and the factual and legal difficulties of the present case. Account must also be taken of progress made by Ireland as regards compliance with its obligations and the fact that it is not proven

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that the landslide at Derrybrien was linked to the construction of the wind farm. In addition, Ireland has cooperated with the Commission constructively and has been committed to achieving a resolution for the problems at issue. The delay between December 2016 and October 2017 is attributable to a simple misunderstanding between Ireland and the Commission and is not indicative of a lack of cooperation.

110 Given the particular circumstances of the present case and the difficulties of establishing a regularisation mechanism consistent with the principles of legal certainty and of the protection of legitimate expectations, it is likewise not appropriate to apply a duration coefficient.

Findings of the Court

111 As a preliminary point, it should be borne in mind that, in each case, it is for the Court to determine, in the light of the circumstances of the case before it and according to the degree of persuasion and deterrence which appears to it to be required, the financial penalties appropriate, in particular, for preventing the recurrence of similar infringements of EU law (judgment of 14 November 2018, *Commission* v *Greece*, C-93/17, EU:C:2018:903, paragraph 107 and the case-law cited).

The lump sum payment

112 As a preliminary point it must be borne in mind that, in exercising the discretion conferred on it in such matters, the Court is empowered to impose a penalty payment and a lump sum payment cumulatively (judgment of 14 November 2018, *Commission* v *Greece*, C-93/17, EU:C:2018:903, paragraph 153).

113 The imposition of a lump sum payment and the fixing of that sum must depend in each individual case on all the relevant factors relating both to the characteristics of the failure to fulfil obligations established and to the conduct of the Member State involved in the procedure initiated under Article 260 TFEU. That provision confers a wide discretion on the Court in deciding whether to impose such a penalty and, if it decides to do so, in determining the amount (judgment of 14 November 2018, *Commission* v *Greece*, C-93/17, EU:C:2018:903, paragraph 154).

114 In addition, it is for the Court, in the exercise of its discretion, to fix the lump sum in an amount appropriate to the circumstances and proportionate to the infringement. Relevant considerations in this respect include factors such as the seriousness of the infringement and the length of time for which the infringement has persisted since the delivery of the judgment establishing it, and the relevant Member State's ability to pay (see, to that effect, judgments of 2 December 2014, *Commission* v *Italy*, C-196/13, EU:C:2014:2407, paragraphs 117 and 118, and of 14 November 2018, *Commission* v *Greece*, C-93/17, EU:C:2018:903, paragraphs 156, 157 and 158).

115 In the first place, as regards the seriousness of the infringement, it must be borne in mind that the objective of protecting the environment constitutes one of the essential objectives of the European Union and is both fundamental and inter-disciplinary in nature (see, to that effect, judgment of 28 February 2012, *Inter-Environnement Wallonie and Terre wallonne*, C-41/11, EU:C:2012:103, paragraph 57 and the case-law cited).

116 An environmental impact assessment, such as that provided for by Directive 85/337, is one of the fundamental environmental protection mechanisms in that it enables, as recalled in paragraph 73 above, the creation of pollution or nuisances to be prevented at source rather than subsequently trying to deal with their effects.

117 In accordance with the case-law recalled in paragraph 75 above, in the event of a breach of the obligation to assess the environmental impact, Member States are nevertheless required by EU law to eliminate at least the unlawful consequences of that breach (see, to that effect, judgment of 26 July 2017, *Comune di Corridonia and Others*, C-196/16 and C-197/16, EU:C:2017:589, paragraph 35).

118 As is apparent from paragraphs 23 to 36 above, from the time it was held in the judgment of 3 July 2008, *Commission* v *Ireland* (C-215/06, EU:C:2008:380) that there was a failure to fulfil obligations, consisting in the breach of the obligation to carry out an environmental impact assessment before consent for, and construction of, the wind farm, more than 11 years have elapsed without Ireland adopting the measures necessary in order to comply with the second indent of point 1 of the operative part of that judgment.

119 Admittedly, in July 2010 Ireland enacted the PDAA, Part XA of which provides for a procedure for regularising the projects authorised in breach of the obligation to carry out an environmental impact assessment. However, a little over 2 years later, Ireland informed the Commission that it was not going to apply the regularisation procedure, whereas, from April 2009 it had been stating the contrary. On the other hand, Ireland proposed to carry out an unofficial, non-statutory assessment. By letter of 29 March 2019, and thus 2 days before the hearing before the Court in the present case, Ireland changed its position again and now contends that the wind farm operator will request that the regularisation procedure provided for in Part XA of the PDAA be applied. At the hearing, Ireland was, however, unable to state whether that procedure would be commenced, on their own initiative, by the competent authorities, pursuant to Section 177 B of Part XA of the PDAA, or on the application of the operator, pursuant to Section 177 C of Part XA of the PDAA. Nor was it in a position to state the start date for the procedure. To date, the Court has received no other information in that regard.

120 It must be found that, in those circumstances, Ireland's conduct shows that it has not acted in accordance with its duty of sincere cooperation to put an end to the failure to fulfil obligations established in the second indent of point 1 of the

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119 Admittedly, in July 2010 Ireland enacted the PDAA. Part XA of which provides for a procedure for regularising the projects authorised in breach of the obligation to carry out an environmental impact assessment. However, a little over 2 years later, Ireland informed the Commission that it was not going to apply the regularisation procedure, whereas, from April 2009 it had been stating the contrary. On the other hand, Ireland proposed to carry out an unofficial, non-statutory assessment. By letter of 29 March 2019, and thus 2 days before the hearing before the Court in the present case, Ireland changed its position again and now contends that the wind farm operator will request that the regularisation procedure provided for in Part XA of the PDAA be applied. At the hearing, Ireland was, however, unable to state whether that procedure would be commenced, on their own initiative, by the competent authorities, pursuant to Section 177 B of Part XA of the PDAA, or on the application of the operator, pursuant to Section 177 C of Part XA of the PDAA. Nor was it in a position to state the start date for the procedure. To date, the Court has received no other information in that regard.

120 It must be found that, in those circumstances, Ireland's conduct shows that it has not acted in accordance with its duty of sincere cooperation to put an end to the failure to fulfil obligations established in the second indent of point 1 of the

operative part of the judgment of 3 July 2008, *Commission* v *Ireland* (C-215/06, EU:C:2008:380), which constitutes an aggravating circumstance.

121 Since that judgment has not yet been complied with, the Court cannot, therefore, but confirm the particularly lengthy character of an infringement which, in the light of the environmental protection aim pursued by Directive 85/337, is a matter of indisputable seriousness (see, by analogy, judgment of 22 February 2018, *Commission* v *Greece*, C-328/16, EU:C:2018:98, paragraph 94).

122 As regards, in the second place, the duration of the infringement, it should be borne in mind that that duration must be assessed by reference to the date on which the Court assesses the facts and not the date on which proceedings are brought before it by the Commission. In the present case, the duration of the infringement, of over 11 years from the date of delivery of the judgment of 3 July 2008, *Commission* v *Ireland* (C-215/06, EU:C:2008:380), is considerable (see, by analogy, judgment of 22 February 2018, *Commission* v *Greece*, C-328/16, EU:C:2018:98, paragraph 99).

123 Although Article 260(1) TFEU does not specify the period within which a judgment must be complied with, it follows from settled case-law that the importance of immediate and uniform application of EU law means that the process of compliance must be initiated at once and completed as soon as possible (judgment of 22 February 2018, *Commission* v *Greece*, C-328/16, EU:C:2018:98, paragraph 100).

124 In the third place, as regards the ability to pay of the Member State concerned, it is apparent from the case-law of the Court that it is necessary to take account of recent trends in that Member State's gross domestic product (GDP) at the time of the Court's examination of the facts (judgment of 22 February 2018, *Commission* v *Greece*, C-328/16, EU:C:2018:98, paragraph 101).

125 Having regard to all the circumstances of the present case, it must be found that if the future repetition of similar infringements of EU law is to be effectively prevented, a lump sum payment of EUR 5 000 000 must be imposed.

126 Ireland must, therefore, be ordered to pay the Commission a lump sum of EUR 5 000 000.

The penalty payment

127 According to settled case-law, the imposition of a penalty payment is, in principle, justified only in so far as the failure to comply with an earlier judgment of the Court continues up to the time of the Court's examination of the facts (judgment of 14 November 2018, *Commission* v *Greece*, C-93/17, EU:C:2018:903, paragraph 108 and the case-law cited).

128 In the present case, it is not in dispute that, as noted, in particular in paragraphs 118 and 119 above, Ireland has still not carried out an environmental

impact assessment of the wind farm in the context of a procedure for regularising the consents at issue, granted in breach of the obligation to carry out a prior environmental impact assessment laid down in Directive 85/337. As at the date on which the facts were examined by it, the Court does not have any information that would show that there has been any change to that situation.

129 In the light of the foregoing, it must be held that the failure to fulfil obligations of which Ireland stands criticised continued up until the Court's examination of the facts in the present case.

130 In those circumstances, the Court considers that an order imposing a penalty payment on Ireland is an appropriate financial means by which to induce it to take the measures necessary to bring to an end the failure to fulfil obligations established and to ensure full compliance with the judgment of 3 July 2008, *Commission* v *Ireland* (C-215/06, EU:C:2008:380).

131 As regards the calculation of the amount of the penalty payment, according to settled case-law, the penalty payment must be decided upon according to the degree of persuasion needed in order for the Member State which has failed to comply with a judgment establishing a breach of obligations to alter its conduct and bring to an end the infringement established. In exercising its discretion in the matter, it is for the Court to set the penalty payment so that it is both appropriate to the circumstances and proportionate to the infringement established and the ability to pay of the Member State concerned (judgment of 14 November 2018, *Commission* v *Greece*, C-93/17, EU:C:2018:903, paragraphs 117 and 118).

132 The Commission's proposals regarding the amount of the penalty payment cannot bind the Court and are merely a useful point of reference. The Court must remain free to set the penalty payment to be imposed in an amount and in a form that it considers appropriate for the purposes of inducing the Member State concerned to bring to an end its failure to comply with its obligations arising under EU law (see, to that effect, judgment of 14 November 2018, *Commission* v *Greece*, C-93/17, EU:C:2018:903, paragraph 119).

133 For the purposes of determining the amount of a penalty payment, the basic criteria which must be taken into consideration in order to ensure that that payment has coercive effect and that EU law is applied uniformly and effectively are, in principle, the seriousness of the infringement, its duration and the ability to pay of the Member State in question. In applying those criteria, regard must be had, in particular, to the effects on public and private interests of the failure to comply and to how urgent it is for the Member State concerned to be induced to fulfil its obligations (judgment of 14 November 2018, *Commission* v *Greece*, C-93/17, EU:C:2018:903, paragraph 120).

134 In the present case, having regard to all the legal and factual circumstances culminating in the breach of obligations established and the considerations set out

impact assessment of the wind farm in the context of a procedure for regularising the consents at issue, granted in breach of the obligation to carry out a prior environmental impact assessment laid down in Directive 85/337. As at the date on which the facts were examined by it, the Court does not have any information that would show that there has been any change to that situation.

129 In the light of the foregoing, it must be held that the failure to fulfil obligations of which Ireland stands criticised continued up until the Court's examination of the facts in the present case.

130 In those circumstances, the Court considers that an order imposing a penalty payment on Ireland is an appropriate financial means by which to induce it to take the measures necessary to bring to an end the failure to fulfil obligations established and to ensure full compliance with the judgment of 3 July 2008, Commission v Ireland (C-215/06, EU:C:2008:380).

131 As regards the calculation of the amount of the penalty payment, according to settled case-law, the penalty payment must be decided upon according to the degree of persuasion needed in order for the Member State which has failed to comply with a judgment establishing a breach of obligations to alter its conduct and bring to an end the infringement established. In exercising its discretion in the matter, it is for the Court to set the penalty payment so that it is both appropriate to the circumstances and proportionate to the infringement established and the ability to pay of the Member State concerned (judgment of 14 November 2018, Commission v Greece, C-93/17, EU:C:2018:903, paragraphs 117 and 118).

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134 In the present case, having regard to all the legal and factual circumstances culminating in the breach of obligations established and the considerations set out

in paragraphs 115 to 124 above, the Court considers it appropriate to impose a penalty payment of EUR 15 000 per day.

135 Ireland must, therefore be ordered to pay the Commission a periodic penalty payment of EUR 15 000 per day of delay of implementing the measures necessary in order to comply with the judgment of 3 July 2008, *Commission* v *Ireland* (C-215/06, EU:C:2008:380) from the date of delivery of the present judgment until the date of compliance with that judgment of 3 July 2008.

Costs

136 Under Article 138(1) of the Rules of Procedure of the Court, the unsuccessful party is to be ordered to pay the costs if they have been applied for in the successful party's pleadings. Since the Commission has applied for costs and Ireland has been unsuccessful, the latter must be ordered to pay the costs.

On those grounds, the Court (Grand Chamber) hereby:

1. **Declares that, by failing to take all measures necessary to comply with the judgment of 3 July 2008, *Commission* v *Ireland* (C-215/06, EU:C:2008:380), Ireland has failed to fulfil its obligations under Article 260(1) TFEU;**

2. **Orders Ireland to pay the European Commission a lump sum in the amount of EUR 5 000 000;**

3. **Orders Ireland to pay the Commission a periodic penalty payment of EUR 15 000 per day from the date of delivery of the present judgment until the date of compliance with the judgment of 3 July 2008, *Commission* v *Ireland* (C-215/06, EU:C:2008:380);**

4. **Orders Ireland to pay the costs.**

Lenaerts	Silva de Lapuerta	Bonichot
Arabadjiev	Prechal	Safjan
Rodin	Bay Larsen	von Danwitz
Toader	Biltgen	Jürimäe
	Lycourgos	

Delivered in open court in Luxembourg on 12 November 2019.

A. Calot Escobar	K. Lenaerts
Registrar	President

4. **Orders Ireland to pay the costs.**

Lenaerts Silva de Lapuerta Bonichot

Arabadjiev Prechal Safjan

Rodin Bay Larsen von Danwitz

Toader Biltgen Jürimäe

Lycourgos

Delivered in open court in Luxembourg on 12 November 2019.

A. Calot Escobar K. Lenaerts

Registrar President

Appendix 3

Appendix 3

Registered number: 367625

Gort Windfarms Limited

Annual Report and Financial Statements

For the Year Ended 31 December 2019

Registered number: 367625

Gort Windfarms Limited

Annual Report and Financial Statements

For the Year Ended 31 December 2019

Gort Windfarms Limited

Company Information

Directors	C. Kinsman (appointed 14 January 2019, resigned 6 March 2020) M. Sinnott (appointed 1 August 2019, resigned 6 March 2020) J. Gartland (appointed 6 March 2020) A. Kelly (resigned 14 January 2019) J. Redmond (resigned 1 August 2019) J. Healy - Alternate Director (resigned 1 August 2019) J. Healy (appointed 1 August 2019, resigned 6 March 2020) D. Farrell (appointed 6 March 2020) D. Phelan (appointed 6 March 2020)
Company secretary	V. O'Brien
Registered number	367625
Registered office	Two Gateway East Wall Road Dublin 3 Ireland D03 A995
Independent auditors	PricewaterhouseCoopers Chartered Accountants and Statutory Audit Firm One Spencer Dock North Wall Quay Dublin 1 Ireland

Gort Windfarms Limited

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Gort Windfarms Limited

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Gort Windfarms Limited

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Directors' Report
For the Year Ended 31 December 2019

The directors present their annual report and financial statements for the year ended 31 December 2019.

Principal activities

The company is engaged in the operation of a wind farm at Derrybrien, Co. Galway, Ireland.

Going concern

The directors have adopted the going concern basis in preparing the financial statements. Further details are set out in note 1.3 to the financial statements.

Results and dividends

The loss for the year, after taxation, amounted to €1,132 thousand (2018 - profit €795 thousand).

No dividend was declared by the directors (2018 - €Nil).

Directors, secretary and their interests

The directors who served during the year and up to the date of approval of these financial statements were:

J. Gartland (appointed 6 March 2020)
D. Farrell (appointed 6 March 2020)
D. Phelan (appointed 6 March 2020)
C. Kinsman (appointed 14 January 2019, resigned 6 March 2020)
M. Sinnott (appointed 1 August 2019, resigned 6 March 2020)
A. Kelly (resigned 14 January 2019)
J. Redmond (resigned 1 August 2019)
J. Healy - Alternate Director (resigned 1 August 2019)
J. Healy (appointed 1 August 2019, resigned 6 March 2020)

On 11 February 2020, J. Healy resigned as company secretary and on the same date, Vicki O'Brien was appointed company secretary.

The directors and secretary had no disclosable interests in the shares of the company, or any other group company, as defined in section 329 of the Companies Act 2014, at 31 December 2019 or 31 December 2018.

Small companies note

The company's financial statements have been prepared in accordance with the provisions applicable to entities subject to the small companies regime.

Political and charitable contributions

The company made no political or charitable contributions during the year (2018 - €Nil) and has complied with the Electoral Act 1997.

Accounting records

The measures taken by the directors to ensure compliance with the requirements of Sections 281 to 285 of the Companies Act 2014 with regard to the keeping of adequate accounting records, are the employment of appropriately qualified accounting personnel and the maintenance of computerised accounting systems. The company's accounting records are maintained at the company's registered office at Two Gateway, East Wall Road, Dublin 3, Ireland D03 A995.

Gort Windfarms Limited

Directors' Report
For the Year Ended 31 December 2019

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The directors have adopted the going concern basis in preparing the financial statements. Further details are set out in note 1.3 to the financial statements.

Results and dividends

The loss for the year, after taxation, amounted to €1,132 thousand (2018 - profit €795 thousand).

No dividend was declared by the directors (2018 - €Nil).

Directors, secretary and their interests

The directors who served during the year and up to the date of approval of these financial statements were:

J. Gartland (appointed 6 March 2020)
D. Farrell (appointed 6 March 2020)
D. Phelan (appointed 6 March 2020)
C. Kinsman (appointed 14 January 2019, resigned 6 March 2020)
M. Sinnott (appointed 1 August 2019, resigned 6 March 2020)
A. Kelly (resigned 14 January 2019)
J. Redmond (resigned 1 August 2019)
J. Healy - Alternate Director (resigned 1 August 2019)
J. Healy (appointed 1 August 2019, resigned 6 March 2020)

On 11 February 2020, J. Healy resigned as company secretary and on the same date, Vicki O'Brien was appointed company secretary.

The directors and secretary had no disclosable interests in the shares of the company, or any other group company, as defined in section 329 of the Companies Act 2014, at 31 December 2019 or 31 December 2018.

Small companies note

The company's financial statements have been prepared in accordance with the provisions applicable to entities subject to the small companies regime.

Political and charitable contributions

The company made no political or charitable contributions during the year (2018 - €Nil) and has complied with the Electoral Act 1997.

Accounting records

The measures taken by the directors to ensure compliance with the requirements of Sections 281 to 285 of the Companies Act 2014 with regard to the keeping of adequate accounting records, are the employment of appropriately qualified accounting personnel and the maintenance of computerised accounting systems. The company's accounting records are maintained at the company's registered office at Two Gateway, East Wall Road, Dublin 3, Ireland D03 A995.

Directors' Report (continued)
For the Year Ended 31 December 2019

Events since the end of the financial year

The Covid-19 pandemic has created turbulence in financial markets and economic uncertainty, which will impact individuals and businesses. Given the nature of the Company's business, the directors do not believe that Covid-19 will have a material impact on the company. However, given the inherent uncertainties, there is a risk that this could change as the financial impact of Covid-19 on the company's future financial performance becomes clearer.

Research and development

The company did not engage in any research and development activities in the current or preceding year.

Statement on relevant audit information

Each of the persons who are directors at the time when this Directors' Report is approved has confirmed that:

- so far as the director is aware, there is no relevant audit information of which the company's auditors are unaware, and
- the director has taken all the steps that ought to have been taken as a director in order to be aware of any relevant audit information and to establish that the company's auditors are aware of that information (within the meaning of section 330 of the Companies Act 2014).

Auditors

The auditors, PricewaterhouseCoopers, have indicated their willingness to continue in office in accordance with section 383(2) of the Companies Act 2014.

This report was approved by the board and signed on its behalf.

J. Gartland
Director
Date: 22 June 2020

D. Phelan
Director
Date: 22 June 2020

Events since the end of the financial year

The Covid-19 pandemic has created turbulence in financial markets and economic uncertainty, which will impact individuals and businesses. Given the nature of the Company's business, the directors do not believe that Covid-19 will have a material impact on the company. However, given the inherent uncertainties, there is a risk that this could change as the financial impact of Covid-19 on the company's future financial performance becomes clearer.

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The company did not engage in any research and development activities in the current or preceding year.

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Each of the persons who are directors at the time when this Directors' Report is approved has confirmed that:

- so far as the director is aware, there is no relevant audit information of which the company's auditors are unaware, and
- the director has taken all the steps that ought to have been taken as a director in order to be aware of any relevant audit information and to establish that the company's auditors are aware of that information (within the meaning of section 330 of the Companies Act 2014).

Auditors

The auditors, PricewaterhouseCoopers, have indicated their willingness to continue in office in accordance with section 383(2) of the Companies Act 2014.

This report was approved by the board and signed on its behalf.

J. Gartland
Director
Date: 22 June 2020

D. Phelan
Director
Date: 22 June 2020

Statement of Directors' Responsibilities
For the Year Ended 31 December 2019

The directors are responsible for preparing the annual report and the financial statements in accordance with Irish law.

Irish law requires the directors to prepare financial statements for each financial year giving a true and fair view of the company's assets, liabilities and financial position at the end of the financial year and the profit or loss of the company for the financial year. Under that law the directors have prepared the financial statements in accordance with Irish Generally Accepted Accounting Practice (accounting standards issued by the UK Financial Reporting Council, including Financial Reporting Standard 101 'Reduced Disclosure Framework' and Irish law).

Under Irish law, the directors shall not approve the financial statements unless they are satisfied that they give a true and fair view of the company's assets, liabilities and financial position as at the end of the financial year and the profit or loss of the company for the financial year.

In preparing these financial statements, the directors are required to:

- select suitable accounting policies and then apply them consistently;
- make judgements and estimates that are reasonable and prudent;
- state whether the financial statements have been prepared in accordance with applicable accounting standards and identify the standards in question, subject to any material departures from those standards being disclosed and explained in the notes to the financial statements; and
- prepare the financial statements on the going concern basis unless it is inappropriate to presume that the company will continue in business.

The directors are responsible for keeping adequate accounting records that are sufficient to:

- correctly record and explain the transactions of the company;
- enable, at any time, the assets, liabilities, financial position and profit or loss of the company to be determined with reasonable accuracy; and
- enable the directors to ensure that the financial statements comply with the Companies Act 2014 and enable those financial statements to be audited.

The directors are also responsible for safeguarding the assets of the company and hence for taking reasonable steps for the prevention and detection of fraud and other irregularities.

On behalf of the board

J. Gartland
Director
Date: 22 June 2020

D. Phelan
Director
Date:22 June 2020

Gort Windfarms Limited

Statement of Directors' Responsibilities
For the Year Ended 31 December 2019

The directors are responsible for preparing the annual report and the financial statements in accordance with Irish law.

Irish law requires the directors to prepare financial statements for each financial year giving a true and fair view of the company's assets, liabilities and financial position at the end of the financial year and the profit or loss of the company for the financial year. Under that law the directors have prepared the financial statements in accordance with Irish Generally Accepted Accounting Practice (accounting standards issued by the UK Financial Reporting Council, including Financial Reporting Standard 101 'Reduced Disclosure Framework' and Irish law)

Under Irish law, the directors shall not approve the financial statements unless they are satisfied that they give a true and fair view of the company's assets, liabilities and financial position as at the end of the financial year and the profit or loss of the company for the financial year.

In preparing these financial statements, the directors are required to:

- select suitable accounting policies and then apply them consistently;
- make judgements and estimates that are reasonable and prudent;
- state whether the financial statements have been prepared in accordance with applicable accounting standards and identify the standards in question, subject to any material departures from those standards being disclosed and explained in the notes to the financial statements; and
- prepare the financial statements on the going concern basis unless it is inappropriate to presume that the company will continue in business.

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- enable the directors to ensure that the financial statements comply with the Companies Act 2014 and enable those financial statements to be audited.

The directors are also responsible for safeguarding the assets of the company and hence for taking reasonable steps for the prevention and detection of fraud and other irregularities.

On behalf of the board

J. Garniard
Director
Date: 22 June 2020

D. Phelan
Director
Date: 22 June 2020

Independent Auditors' Report to the Members of Gort Windfarms Limited

Report on the audit of the financial statements

Opinion

In our opinion, Gort Windfarms Limited's financial statements:

- give a true and fair view of the company's assets, liabilities and financial position as at 31 December 2019 and of its loss for the year then ended;
- have been properly prepared in accordance with Generally Accepted Accounting Practice in Ireland (accounting standards issued by the Financial Reporting Council of the UK, including Financial Reporting Standard 101 "Reduced Disclosure Framework" and Irish law); and
- have been properly prepared in accordance with the requirements of the Companies Act 2014.

We have audited the financial statements, included within the Annual Report and Financial Statements, which comprise:

- the Balance Sheet as at 31 December 2019;
- the Profit and Loss Account for the year then ended;
- the Statement of Comprehensive Income for the year then ended;
- the Statement of Changes in Equity for the year then ended; and
- the notes to the financial statements, which include a description of the significant accounting policies.

Basis for opinion

We conducted our audit in accordance with International Standards on Auditing (Ireland) ("ISAs (Ireland)") and applicable law.

Our responsibilities under ISAs (Ireland) are further described in the Auditors' responsibilities for the audit of the financial statements section of our report. We believe that the audit evidence we have obtained is sufficient and appropriate to provide a basis for our opinion.

Independence

We remained independent of the company in accordance with the ethical requirements that are relevant to our audit of the financial statements in Ireland, which includes IAASA's Ethical Standard, and we have fulfilled our other ethical responsibilities in accordance with these requirements.

Conclusions relating to going concern

We have nothing to report in respect of the following matters in relation to which ISAs (Ireland) require us to report to you where:

- the directors' use of the going concern basis of accounting in the preparation of the financial statements is not appropriate; or
- the directors have not disclosed in the financial statements any identified material uncertainties that may cast significant doubt about the company's ability to continue to adopt the going concern basis of accounting for a period of at least twelve months from the date when the financial statements are authorised for issue.

However, because not all future events or conditions can be predicted, this statement is not a guarantee as to the company's ability to continue as a going concern.

Reporting on other information

The other information comprises all of the information in the Annual Report and Financial Statements other than the financial statements and our auditors' report thereon. The directors are responsible for the other information. Our opinion on the financial statements does not cover the other information and, accordingly, we do not express an audit opinion or, except to the extent otherwise explicitly stated in this report, any form of assurance thereon.

Gort Windfarms Limited

Independent Auditors' Report to the Members of Gort Windfarms Limited

Report on the audit of the financial statements

Opinion

In our opinion, Gort Windfarms Limited's financial statements:

- give a true and fair view of the company's assets, liabilities and financial position as at 31 December 2019 and of its loss for the year then ended;
- have been properly prepared in accordance with Generally Accepted Accounting Practice in Ireland (accounting standards issued by the Financial Reporting Council of the UK, including Financial Reporting Standard 101 "Reduced Disclosure Framework" and Irish law); and
- have been properly prepared in accordance with the requirements of the Companies Act 2014.

We have audited the financial statements, included within the Annual Report and Financial Statements, which comprise:

- the Balance Sheet as at 31 December 2019;
- the Profit and Loss Account for the year then ended;
- the Statement of Comprehensive Income for the year then ended;
- the Statement of Changes in Equity for the year then ended; and
- the notes to the financial statements, which include a description of the significant accounting policies.

Basis for opinion

We conducted our audit in accordance with International Standards on Auditing (Ireland) ("ISAs (Ireland)") and applicable law.

Our responsibilities under ISAs (Ireland) are further described in the Auditors' responsibilities for the audit of the financial statements section of our report. We believe that the audit evidence we have obtained is sufficient and appropriate to provide a basis for our opinion.

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Conclusions relating to going concern

We have nothing to report in respect of the following matters in relation to which ISAs (Ireland) require us to report to you where

- the directors' use of the going concern basis of accounting in the preparation of the financial statements is not appropriate; or
- the directors have not disclosed in the financial statements any identified material uncertainties that may cast significant doubt about the company's ability to continue to adopt the going concern basis of accounting for a period of at least twelve months from the date when the financial statements are authorised for issue.

However, because not all future events or conditions can be predicted, this statement is not a guarantee as to the company's ability to continue as a going concern

Reporting on other information

The other information comprises all of the information in the Annual Report and Financial Statements other than the financial statements and our auditors' report thereon. The directors are responsible for the other information. Our opinion on the financial statements does not cover the other information and, accordingly, we do not express an audit opinion or, except to the extent otherwise explicitly stated in this report, any form of assurance thereon.

Independent Auditors' Report to the Members of Gort Windfarms Limited

In connection with our audit of the financial statements, our responsibility is to read the other information and, in doing so, consider whether the other information is materially inconsistent with the financial statements or our knowledge obtained in the audit, or otherwise appears to be materially misstated. If we identify an apparent material inconsistency or material misstatement, we are required to perform procedures to conclude whether *there is a material misstatement of the financial statements or a material misstatement of the other information.* If, based on the work we have performed, we conclude that there is a material misstatement of this other information, we are required to report that fact. We have nothing to report based on these responsibilities.

With respect to the Directors' Report, we also considered whether the disclosures required by the Companies Act 2014 have been included.

Based on the responsibilities described above and our work undertaken in the course of the audit, ISAs (Ireland) and the Companies Act 2014 require us to also report certain opinions and matters as described below:

- In our opinion, based on the work undertaken in the course of the audit, the information given in the Directors' Report for the year ended 31 December 2019 is consistent with the financial statements and has been prepared in accordance with applicable legal requirements.
- Based on our knowledge and understanding of the company and its environment obtained in the course of the audit, we have not identified any material misstatements in the Directors' Report.

Responsibilities for the financial statements and the audit

Responsibilities of the directors for the financial statements

As explained more fully in the Statement of directors' responsibilities, the directors are responsible for the preparation of the financial statements in accordance with the applicable framework and for being satisfied that they give a true and fair view.

The directors are also responsible for such internal control as they determine is necessary to enable the preparation of financial statements that are free from material misstatement, whether due to fraud or error.

In preparing the financial statements, the directors are responsible for assessing the company's ability to continue as a going concern, disclosing as applicable, matters related to going concern and using the going concern basis of accounting unless the directors either intend to liquidate the company or to cease operations, or have no realistic alternative but to do so.

Auditors' responsibilities for the audit of the financial statements

Our objectives are to obtain reasonable assurance about whether the financial statements as a whole are free from material misstatement, whether due to fraud or error, and to issue an auditors' report that includes our *opinion. Reasonable assurance is a high level of assurance, but is not a guarantee that an audit conducted in* accordance with ISAs (Ireland) will always detect a material misstatement when it exists. Misstatements can arise from fraud or error and are considered material if, individually or in the aggregate, they could reasonably be expected to influence the economic decisions of users taken on the basis of these financial statements.

A further description of our responsibilities for the audit of the financial statements is located on the IAASA website at:

https://www.iaasa.ie/getmedia/b2389013-1cf6-458b-9b8f-a98202dc9c3a/Description_of_auditors_ responsibilities_ for_audit.pdf

This description forms part of our auditors' report.

Use of this report

This report, including the opinions, has been prepared for and only for the company's members as a body in accordance with section 391 of the Companies Act 2014 and for no other purpose. We do not, in giving these opinions, accept or assume responsibility for any other purpose or to any other person to whom this report is shown or into whose hands it may come save where expressly agreed by our prior consent in writing.

Gort Windfarms Limited

Independent Auditors' Report to the Members of Gort Windfarms Limited

In connection with our audit of the financial statements, our responsibility is to read the other information and, in doing so, consider whether the other information is materially inconsistent with the financial statements or our knowledge obtained in the audit, or otherwise appears to be materially misstated. If we identify an apparent material inconsistency or material misstatement, we are required to perform procedures to conclude whether there is a material misstatement of the financial statements or a material misstatement of the other information. If, based on the work we have performed, we conclude that there is a material misstatement of this other information, we are required to report that fact. We have nothing to report based on these responsibilities.

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- Based on our knowledge and understanding of the company and its environment obtained in the course of the audit, we have not identified any material misstatements in the Directors' Report.

Responsibilities for the financial statements and the audit

Responsibilities of the directors for the financial statements

As explained more fully in the Statement of directors' responsibilities, the directors are responsible for the preparation of the financial statements in accordance with the applicable framework and for being satisfied that *they give a true and fair view*.

The directors are also responsible for such internal control as they determine is necessary to enable the preparation of financial statements that are free from material misstatement, whether due to fraud or error.

In preparing the financial statements, the directors are responsible for assessing the company's ability to continue as a going concern, disclosing as applicable, matters related to going concern and using the going concern basis of accounting unless the directors either intend to liquidate the company or to cease operations, or have no realistic alternative but to do so.

Auditors' responsibilities for the audit of the financial statements

Our objectives are to obtain reasonable assurance about whether the financial statements as a whole are free from material misstatement, whether due to fraud or error, and to issue an auditors' report that includes our opinion. Reasonable assurance is a high level of assurance, but is not a guarantee that an audit conducted in accordance with ISAs (Ireland) will always detect a material misstatement when it exists. Misstatements can arise from fraud or error and are considered material if, individually or in the aggregate, they could reasonably be expected to influence the economic decisions of users taken on the basis of these financial statements.

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Independent Auditors' Report to the Members of Gort Windfarms Limited

Other required reporting

Companies Act 2014 opinions on other matters

- We have obtained all the information and explanations which we consider necessary for the purposes of our audit.
- In our opinion the accounting records of the company were sufficient to permit the financial statements to be readily and properly audited.
- The financial statements are in agreement with the accounting records.

Other exception reporting

Directors' remuneration and transactions

Under the Companies Act 2014 we are required to report to you if, in our opinion, the disclosures of directors' remuneration and transactions specified by sections 305 to 312 of that Act have not been made. We have no exceptions to report arising from this responsibility.

Mary Cleary

Mary Cleary (Senior Statutory Auditor)
for and on behalf of
PricewaterhouseCoopers
Chartered Accountants and Statutory Audit Firm
Dublin
One Spencer Dock
22 June 2020

Gort Windfarms Limited

Independent Auditors' Report to the Members of Gort Windfarms Limited

Other required reporting

Companies Act 2014 opinions on other matters

- We have obtained all the information and explanations which we consider necessary for the purposes of our audit.
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- The financial statements are in agreement with the accounting records.

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Mary Cleary

Mary Cleary (Senior Statutory Auditor)
for and on behalf of
PricewaterhouseCoopers

Chartered Accountants and Statutory Audit Firm

Dublin

One Spencer Dock

22 June 2020

Profit and Loss Account
For the Year Ended 31 December 2019

	Note	2019 €000	2018 €000
Turnover	3	**4,970**	7,292
Cost of sales		**(5,730)**	(5,418)
Gross (loss)/profit		**(760)**	1,874
Administrative expenses		**(547)**	(809)
Operating (loss)/profit	4	**(1,307)**	1,065
Interest payable and similar charges	6	**(42)**	(70)
(Loss)/profit on ordinary activities before taxation		**(1,349)**	995
Taxation on (loss)/profit on ordinary activities	7	**217**	(200)
(Loss)/profit for the financial year		**(1,132)**	795

The notes on pages 11 to 25 form part of these financial statements.

Gort Windfarms Limited

Profit and Loss Account
For the Year Ended 31 December 2019

	Note	2019 £000	2018 £000
Turnover	3	4,970	7,292
Cost of sales		(5,730)	(5,418)
Gross (loss)/profit		(760)	1,874
Administrative expenses		(647)	(809)
Operating (loss)/profit	4	(1,307)	1,065
Interest payable and similar charges	5	(42)	(70)
(Loss)/profit on ordinary activities before taxation		(1,349)	995
Taxation on (loss)/profit on ordinary activities	7	217	(200)
(Loss)/profit for the financial year		(1,132)	795

The notes on pages 11 to 25 form part of these financial statements.

Statement of Comprehensive Income
For the Year Ended 31 December 2019

	2019 €000	2018 €000
(Loss)/profit for the financial year	(1,132)	795
Total comprehensive (loss)/income for the year	(1,132)	795

The notes on pages 11 to 25 form part of these financial statements.

Gort Windfarms Limited

Statement of Comprehensive Income
For the Year Ended 31 December 2019

	2019	2018
	€000	€000
(Loss)/profit for the financial year	(1,132)	785
Total comprehensive (loss)/income for the year	(1,132)	785

The notes on pages 11 to 25 form part of these financial statements.

Balance Sheet
As at 31 December 2019

	Note		2019 €000		2018 €000
Non-current assets					
Right of use assets	8		1,758		-
Property, plant and equipment	9		18,317		20,141
			20,075		20,141
Current assets					
Trade and other receivables	10	1,379		2,280	
Cash at bank and in hand	11	464		9,649	
		1,843		11,929	
Trade and other payables falling due within one year	12	(9,747)		(21,013)	
Net current liabilities			(7,904)		(9,084)
Total assets less current liabilities			12,171		11,057
Trade and other payables falling due after more than one year	13		(1,565)		-
			10,606		11,057
Provisions for liabilities					
Deferred taxation	14	(1,438)		(1,655)	
Other provisions	15	(7,896)		(6,998)	
			(9,334)		(8,653)
Net assets			1,272		2,404
Capital and reserves					
Called up share capital	16		-		-
Profit and loss account			1,272		2,404
Shareholders' funds			1,272		2,404

The financial statements were approved and authorised for issue by the board:

J. Gartland
Director
Date: 22 June 2020

D. Phelan
Director
Date: 22 June 2020

The notes on pages 11 to 25 form part of these financial statements.

Gort Windfarms Limited

Balance Sheet
As at 31 December 2019

	Note	2019 €000		2018 €000	
Non-current assets					
Right of use assets	8	1,758		-	
Property, plant and equipment	9	18,317		20,141	
			20,075		20,141
Current assets					
Trade and other receivables	10	1,379		2,280	
Cash at bank and in hand	11	464		9,649	
			1,843		11,929
Trade and other payables falling due within one year	12	(9,747)		(21,013)	
Net current liabilities			(7,904)		(9,084)
Total assets less current liabilities			12,171		11,057
Trade and other payables falling due after more than one year	13		(1,565)		-
			10,606		11,057
Provisions for liabilities					
Deferred taxation	14	(1,439)		(1,855)	
Other provisions	15	(7,895)		(6,998)	
			(9,334)		(8,853)
Net assets			1,272		2,404
Capital and reserves					
Called up share capital	16	-		-	
Profit and loss account		1,272		2,404	
Shareholders' funds		1,272		2,404	

The financial statements were approved and authorised for issue by the board:

J. Gartland
Director
Date: 22 June 2020

D. Phelan
Director
Date: 22 June 2020

The notes on pages 11 to 25 form part of these financial statements.

Statement of Changes in Equity
For the Year Ended 31 December 2019

	Share capital	Profit and loss account	Total equity
	€000	€000	€000
At 1 January 2019	-	2,404	2,404
Comprehensive loss for the year			
Loss for the financial year	-	(1,132)	(1,132)
At 31 December 2019	-	1,272	1,272

Statement of Changes in Equity
For the Year Ended 31 December 2018

	Share capital	Profit and loss account	Total equity
	€000	€000	€000
At 1 January 2018	-	1,609	1,609
Comprehensive income for the year			
Income for the financial year	-	795	795
At 31 December 2018	-	2,404	2,404

The notes on pages 11 to 25 form part of these financial statements.

Gort Windfarms Limited

Statement of Changes in Equity
For the Year Ended 31 December 2019

	Share capital	Profit and loss account	Total equity
	€000	€000	€000
At 1 January 2019	-	2,404	2,404
Comprehensive loss for the year			
Loss for the financial year	-	(1,132)	(1,132)
At 31 December 2019	-	1,272	1,272

Statement of Changes in Equity
For the Year Ended 31 December 2018

	Share capital	Profit and loss account	Total equity
	€000	€000	€000
At 1 January 2018	-	1,609	1,609
Comprehensive income for the Year			
Income for the financial year	-	795	795
At 31 December 2018	-	2,404	2,404

The notes on pages 11 to 25 form part of these financial statements.

Notes to the Financial Statements
For the Year Ended 31 December 2019

1. Accounting policies

Gort Windfarms Limited (registration number: 267625) is a limited company incorporated and operating in Ireland. The principal activity of the company is the operation of a wind farm at Derrybrien, Co. Galway, Ireland. The accounting policies set out below have, unless otherwise stated, been applied consistently to all periods presented in these financial statements.

The financial statements are presented in Euro, which is the functional currency of the company, rounded to the nearest thousand.

1.1 Basis of preparation of financial statements

The financial statements of Gort Windfarms Limited have been prepared in accordance with Irish GAAP (accounting standards issued by the Financial Reporting Council of the UK and the Companies Act 2014). The financial statements comply with Financial Reporting Standard 101, 'Reduced Disclosure Framework' (FRS 101), and the Companies Act 2014.

The financial statements have been prepared under the historical cost convention, except for derivative financial instruments which are valued at fair value.

1.2 Financial Reporting Standard 101 - reduced disclosure exemptions

In these financial statements, the company has applied the exemptions available under FRS 101 in respect of the following disclosures:

- IAS 1: Presentation of Financial Statements: Certain disclosures including comparative information
- IAS 7: Statement of Cash Flows: A Cash Flow Statement and related notes
- IAS 8: Accounting Policies, Changes in Accounting Estimates and Errors
- IAS 24: Related Party Disclosures: Disclosures in respect of transactions entered into between two or more members of the ESB Group, provided that any subsidiary which is a party to the transaction is a wholly owned subsidiary
- IAS 24: Related Party Disclosures: Disclosures in respect of the compensation of key management personnel
- IFRS 15: Revenue from Contracts with Customers: Disclosure requirements of paragraphs 110, 113(a), 114, 115, 118, 119(a) to (c), 120 to 127 and 129

As the consolidated financial statements of Electricity Supply Board (ESB), the company's parent undertaking, include the equivalent disclosures, the company has also taken the exemptions under FRS 101 available in respect of the following disclosures:

- IFRS 7: Financial Instrument Disclosures: Disclosures relating to financial instruments
- IFRS 13: Fair Value Measurement
- IAS 36: Impairment of Assets

1.3 Going concern

The financial statements have been prepared on a going concern basis, which assumes that the company has adequate financial resources to continue in operational existence for at least 12 months from the date of approval of these financial statements.

At 31 December 2019 the company had net current liabilities of €7.9m (31 December 2018: €9.1m).

Gort Windfarms Limited

Notes to the Financial Statements
For the Year Ended 31 December 2019

1. Accounting policies

Gort Windfarms Limited (registration number: 257625) is a limited company incorporated and operating in Ireland. The principal activity of the company is the operation of a wind farm at Derrybrien, Co. Galway, Ireland. The accounting policies set out below have, unless otherwise stated, been applied consistently to all periods presented in these financial statements.

The financial statements are presented in Euro, which is the functional currency of the company, rounded to the nearest thousand.

1.1 Basis of preparation of financial statements

The financial statements of Gort Windfarms Limited have been prepared in accordance with Irish GAAP (accounting standards issued by the Financial Reporting Council of the UK and the Companies Act 2014). The financial statements comply with Financial Reporting Standard 101 'Reduced Disclosure Framework' (FRS 101), and the Companies Act 2014.

The financial statements have been prepared under the historical cost convention, except for derivative financial instruments which are valued at fair value.

1.2 Financial Reporting Standard 101 - reduced disclosure exemptions

In these financial statements, the company has applied the exemptions available under FRS 101 in respect of the following disclosures:

- IAS 1: Presentation of Financial Statements: Certain disclosures including comparative information
- IAS 7: Statement of Cash Flows: A Cash Flow Statement and related notes
- IAS 8: Accounting Policies, Changes in Accounting Estimates and Errors
- IAS 24: Related Party Disclosures: Disclosures in respect of transactions entered into between two or more members of the ESB Group, provided that any subsidiary which is a party to the transaction is a wholly owned subsidiary
- IAS 24: Related Party Disclosures: Disclosures in respect of the compensation of key management personnel
- IFRS 15: Revenue from Contracts with Customers: Disclosure requirements of paragraphs 110, 113(a), 114, 116, 118, 119(a) to (c), 120 to 127 and 129

As the consolidated financial statements of Electricity Supply Board (ESB), the company's parent undertaking, include the equivalent disclosures, the company has also taken the exemptions under FRS 101 available in respect of the following disclosures:

- IFRS 7: Financial Instrument Disclosures: Disclosures relating to financial instruments
- IFRS 13: Fair Value Measurement
- IAS 36: Impairment of Assets

1.3 Going concern

The financial statements have been prepared on a going concern basis, which assumes that the company has adequate financial resources to continue in operational existence for at least 12 months from the date of approval of these financial statements

At 31 December 2019 the company had net current liabilities of €7.9m (31 December 2018: €9.1m)

1. Accounting policies (continued)

The directors, having regard to the continued support of its shareholder, ESB, have a reasonable expectation that the company will have adequate financial resources to continue in operational existence for at least 12 months from the date of approval of these financial statements and consider that it is appropriate to adopt the going concern basis in preparing the financial statements.

1.4 New standards, amendments and IFRIC interpretations

IFRS 16
Gort Windfarms Limited has applied IFRS 16 Leases on 1 January 2019, comparatives for the 2018 *financial year have not been restated.*

Impact on the financial statements on the adoption of IFRS 16
Gort Windfarms Limited has selected the modified retrospective approach upon transition to IFRS 16. Under this transition option:
• The standard is applied from the beginning of the transition accounting period (1 January 2019)
• Lease liabilities are measured as at the transition date (1 January 2019) for the remaining lease payments and are measured using the discount rate, lease term, and other assumptions (reasonable certainty of extensions, terminations, etc.) as at 1 January 2019.

The following tables summarise the impact of transition to IFRS 16 on the opening balance of assets and liabilities.

	Original carrying amount	IFRS 16 transaction impact	New carrying amount
Balance sheet extract	**31 December 2018**		**1 January 2019**
	€000	**€000**	**€000**
Non-current asset			
Right of use (RoU) assets	-	1,914	1,914
Non-current liabilities			
Lease liabilities	-	(1,706)	(1,706)
Current liabilities			
Lease liabilities	-	(208)	(208)

	€000
Operating lease commitments disclosed as at 31 December 2018	***2,565***
Discounted using the incremental borrowing rate	(82)
Add / (Less) adjustments for:	
- Changes in assumptions	(569)
Lease liability recognised as at 1 January 2019	**1,914**
Analysed as follows:	
Non-current liabilities	(1,706)
Current liabilities	(208)
Total	**(1,914)**

Practical Expedients
A number of practical expedients were availed of by Gort Windfarms Limited in relation to IFRS 16, these are detailed below.

Notes to the Financial Statements
For the Year Ended 31 December 2019

1. Accounting policies (continued)

The directors, having regard to the continued support of its shareholder, ESB, have a reasonable expectation that the company will have adequate financial resources to continue in operational existence for at least 12 months from the date of approval of these financial statements and consider that it is appropriate to adopt the going concern basis in preparing the financial statements.

1.4 New standards, amendments and IFRIC interpretations

IFRS 16

Gort Windfarms Limited has applied IFRS 16 Leases on 1 January 2019, comparatives for the 2018 financial year have not been restated.

Impact on the financial statements on the adoption of IFRS 16

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- Lease liabilities are measured as at the transition date (1 January 2019) for the remaining lease payments and are measured using the discount rate, lease term, and other assumptions (reasonable certainty of extensions, terminations, etc.) as at 1 January 2019.

The following tables summarise the impact of transition to IFRS 16 on the opening balance of assets and liabilities.

Balance sheet extract	Original carrying amount 31 December 2018 €000	IFRS 16 transaction impact €000	New carrying amount 1 January 2019 €000
Non-current asset			
Right of use (RoU) assets	-	1,914	1,914
Non-current liabilities			
Lease liabilities	-	(1,706)	(1,706)
Current liabilities			
Lease liabilities	-	(208)	(208)

	€000
Operating lease commitments disclosed as at 31 December 2018	2,865
Discounted using the incremental borrowing rate	(82)
Add \ (Less) adjustments for:	
- Changes in assumptions	(569)
Lease liability recognised as at 1 January 2019	1,914
Analysed as follows:	
Non-current liabilities	(1,706)
Current liabilities	(208)
Total	**(1,914)**

Practical Expedients

A number of practical expedients were availed of by Gort Windfarms Limited in relation to IFRS 16. These are detailed below

Notes to the Financial Statements
For the Year Ended 31 December 2019

1. Accounting policies (continued)

- Grandfather exemption
Gort Windfarms Limited has availed of the 'Grandfather Exemption' transition expedient in relation to IFRS 16. Gort Windfarms Limited is not required to reassess whether a contract is, or contains, a lease at the date of initial application. Instead, the company is permitted:
a) to apply this Standard to contracts that were previously identified as leases applying IAS 17 Leases and IFRIC 4 Determining whether an Arrangement contains a Lease.
b) not to apply this Standard to contracts that were not previously identified as containing a lease applying IAS 17 and IFRIC 4.

The company has recognised all leases included in the operating lease obligation note in the 2018 financial statements in determining the opening IFRS 16 RoU asset / lease liability.

Judgements

(i) Discount Rates
The discount rate was calculated at transition date by contract currency and lease term using the forward interest swap rate plus an appropriate credit margin. The discount rate applied is 0.9%.

(ii) Lease Terms
The lease term was determined with reference to the lease agreement and decision on extension and break clause was assessed in line with IFRS 16.

Lease contracts

The company leases wind farmland. Rental contracts are made for fixed periods but may have extension option. The lease agreement does not impose any covenants, but leased assets may not be used as security for borrowing purposes.

IFRS 16 Leases: Accounting policies applied to leases from 1 January 2019

From 1 January 2019, leases are recognised as a right-of-use asset and a corresponding liability at the date at which the leased asset is available for use by the company. Assets and liabilities arising from a lease are initially measured on a present value basis. Lease liabilities include the net present value of the lease payments. Lease payments to be made under reasonably certain extension options are also included in the measurement of the liability. The lease payments are discounted using the interest rate implicit in the lease. If that rate cannot be readily determined, which is generally the case in the company, the incremental borrowing rate is used, being the rate that the company would have to pay to borrow the funds necessary to obtain an asset of similar value to the right-of-use asset in a similar economic environment with similar terms, security and conditions.

Lease payments are allocated between principal and finance cost. The finance cost is charged to profit or loss over the lease period so as to produce a constant periodic rate of interest on the remaining balance of the liability for each period.

Right-of-use assets are measured at cost comprising the following:
- the amount of the initial measurement of lease liability
- any lease payments made at or before the commencement date less any lease incentives received
- any initial direct costs, and
- restoration costs.

Notes to the Financial Statements
For the Year Ended 31 December 2019

1. Accounting policies (continued)

- Grandfather exemption
Gort Windfarms Limited has availed of the 'Grandfather Exemption' transition expedient in relation to IFRS 16. Gort Windfarms Limited **is** not required to reassess whether a contract is, or contains, a lease at the date of initial application. Instead, the company is permitted:
a) to apply this Standard to contracts that were previously identified as leases applying IAS 17 Leases and IFRIC 4 Determining whether an Arrangement contains a Lease.
b) not to apply this Standard to contracts that were not previously identified as containing a lease applying IAS 17 and IFRIC 4.

The company has recognised all leases included in the operating lease obligation note in the 2018 financial statements in determining the opening IFRS 16 RoU asset / lease liability.

Judgements

(i) Discount Rates
The discount rate was calculated at transition date by contract currency and lease term using the forward interest swap rate plus an appropriate credit margin. The discount rate applied is 0.39%.

(ii) Lease Terms
The lease term was determined with reference to the lease agreement and decision on extension and break clause was assessed in line with IFRS 16.

Lease contracts

The company leases wind farmland. Rental contracts are made for fixed periods but may have extension option. The lease agreement does not impose any covenants, but leased assets may not be used as security for borrowing purposes.

IFRS 16 Leases: Accounting policies applied to leases from 1 January 2019

From 1 January 2019, leases are recognised as a right-of-use asset and a corresponding liability at the date at which the leased asset is available for use by the company. Assets and liabilities arising from a lease are initially measured on a present value basis. Lease liabilities include the net present value of the lease payments. Lease payments to be made under reasonably certain extension options are also included in the measurement of the liability. The lease payments are discounted using the interest rate implicit in the lease. If that rate cannot be readily determined, which is generally the case in the company, the incremental borrowing rate is used, being the rate that the company would have to pay to borrow the funds necessary to obtain an asset of similar value to the right-of-use asset in a similar economic environment with similar terms, security and conditions.

Lease payments are allocated between principal and finance cost. The finance cost is charged to profit or loss *over the lease period so as to produce a constant periodic rate of interest on the* remaining balance of the liability for each period.

Right-of-use assets are measured at cost comprising the following:
- the amount of the initial measurement of lease liability
- any lease payments made at or before the commencement date less any lease incentives received
- any initial direct costs, and
- restoration costs.

Notes to the Financial Statements
For the Year Ended 31 December 2019

1. Accounting policies (continued)

Right-of-use assets are depreciated over the lease term on a straight-line basis.

Payments associated with short-term leases of equipment and all leases of low-value assets are recognised on a straight-line basis as an expense in profit or loss. Short-term leases are leases with a lease term of 12 months or less.

1.5 Turnover

Turnover comprises income, exclusive of value added tax, derived from the sale of electricity generated by the company and is recognised in the Profit and Loss Account once the volume of energy sold under the terms of a power purchase agreement has been verified by both parties to the agreement. No turnover is recognised if there are significant uncertainties regarding the recovery of the consideration due, associated costs or the possible rejection of services by the client.

1.6 Interest payable and similar charges

Interest payable and similar charges comprises interest expense on borrowings and financing charges on lease liabilities.

1.7 Foreign currency translation

Transactions in foreign currencies are recorded at the rate ruling at the date of transactions. The resulting monetary assets and liabilities are translated at the rate ruling at the Balance Sheet date and the exchange differences are dealt with in the Profit and Loss Account. Non-monetary assets and liabilities measured at historical cost are translated using the exchange rate at the date of the transaction and non-monetary items measured at fair value are measured using the exchange rate when fair value was determined.

1.8 Impairment

Assets that have an indefinite useful life are not subject to amortisation and are tested annually for impairment. Assets that are subject to depreciation and amortisation are tested for impairment whenever events or changes in circumstance indicate that the carrying amount may not be recoverable. An impairment loss is recognised for the amount by which an asset's carrying amount exceeds its recoverable amount. The recoverable amount is the higher of an asset's fair value less costs to sell and its value in use. For the purposes of assessing impairment, assets are grouped at the lowest levels for which there are separately identifiable cash flows (CGU).

For power generation assets, value in use is based on the estimated cash flows expected to be generated by the asset and is based on estimates of forecast power generation, forecast power prices and the timing and extent of operating costs and capital expenditure. These cash flows are discounted to their present value using a pre-tax discount rate that reflects the current markets assessment of the time value of money and the risks specific to the asset.

1.9 Property, plant and equipment

Property, plant and equipment is stated at cost less accumulated depreciation and provisions for impairment in value, except for land which is shown at cost less impairment. Property, plant and equipment includes capitalised employee, interest and other costs that are directly attributable to the asset.

Notes to the Financial Statements
For the Year Ended 31 December 2019

1. Accounting policies (continued)

The charge for depreciation is calculated to write down the cost of property, plant and equipment to its estimated residual value over its expected useful life using methods appropriate to the nature of the company's business and to the character and extent of its property, plant and equipment. The major asset classification and its allocated life span is:

Plant and machinery	-	20 years

Depreciation is provided on a straight-line basis for all depreciable assets from the date of commissioning (date available for use).

Reviews of depreciation rates and residual values are conducted annually.

Subsequent expenditure on property, plant and equipment is included in the asset's carrying amount or recognised as a separate asset, as appropriate, only when it is probable that future economic benefits associated with the item will flow to the company and the cost of the item can be measured reliably. All other repairs and maintenance are charged in the Profit and Loss Account during the financial period in which they are incurred.

1.10 Cash at bank and in hand

Cash at bank and in hand includes cash in hand, deposits repayable on demand and other short-term highly liquid investments with original maturities of three months or less.

1.11 Trade and other receivables

Trade and other receivables are initially recognised at fair value, which is usually the original invoiced amount and subsequently carried at amortised cost using the effective interest method less provision made for impairment.

1.12 *Trade and other payables*

Trade and other payables are initially recorded at fair value, which is usually the original invoiced amount, and subsequently carried at amortised cost using the effective interest rate method.

1.13 Amounts payable to and receivable from group companies

Intercompany receivables and payables, including loans, are non-derivative financial assets and liabilities which are not quoted in an active market. Those with maturities less than twelve months *after the Balance Sheet date are included in current assets and current liabilities respectively*. Those with maturities greater than twelve months after the Balance Sheet date are included in non-current assets or liabilities, as appropriate. The balances are initially recorded at fair value and thereafter at amortised cost.

1.14 Impairment of financial assets

The loss allowances for financial assets are based on assumptions about risk of default and expected loss rates. The company uses judgement in making these assumptions and selecting the *inputs to the expected credit loss calculations, based on the company's past history, existing market* conditions and forward looking estimates at the end of each reporting period. For loans and balances with Group companies, the general approach permitted by IFRS 9 is applied, which requires 12 month expected credit losses to be recognised on initial recognition of these receivables. If a significant increase in credit risk occurs, this requires expected lifetime credit losses to be recognised on these receivables. The company applies the IFRS 9 simplified approach to measuring expected credit losses which uses a life time expected loss allowance for all trade and other receivables.

1. Accounting policies (continued)

The charge for depreciation is calculated to write down the cost of property, plant and equipment to its estimated residual value over its expected useful life using methods appropriate to the nature of the company's business and to the character and extent of its property, plant and equipment. The major asset classification and its allocated life span is:

Plant and machinery - 20 years

Depreciation is provided on a straight-line basis for all depreciable assets from the date of commissioning (date available for use).

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Notes to the Financial Statements
For the Year Ended 31 December 2019

1. Accounting policies (continued)

While cash and cash equivalents are also subject to the impairment requirements of IFRS 9, there is no impairment loss identified.

1.15 Current and deferred tax

Income tax on the profit or loss for the year comprises current and deferred tax. Income tax is recognised in the Profit and Loss Account, except to the extent that it relates to items recognised directly in other comprehensive income or equity.

Current tax

Current tax is provided at current rates and is calculated on the basis of results for the year.

Deferred tax

Deferred tax is provided using the Balance Sheet liability method, providing for temporary differences between the carrying amounts of assets and liabilities for financial reporting purposes and the amounts used for taxation purposes.

Deferred tax assets are recognised only to the extent that it is more likely than not that there will be suitable taxable profits from which the future reversal of the underlying temporary differences can be deducted.

Deferred tax is measured at the tax rates that are expected to apply in the periods in which temporary differences reverse, based on tax rates and laws enacted or substantively enacted at the Balance Sheet date.

1.16 Provisions

A provision is recognised if, as a result of a past event, the company has a present legal or constructive obligation that can be estimated reliably, and it is probable that an outflow of economic benefits will be required to settle the obligation. Provisions are determined by discounting the expected future cash flows at a pre-tax rate that reflects current market assessments of the time value of money and the risks specific to the liability. The unwinding of the discount is recognised in interest payable and similar charges.

Provision for asset retirement obligations

The provision for retirement and decommissioning of the wind farm represents the present value of the current estimate of the costs of closure of the wind farm at the end of its useful life. The estimated costs of retirement obligations are recognised in full at the outset of the asset life, but discounted to present values using a risk-free rate. The costs are capitalised in property, plant and equipment and are depreciated over the useful economic life of the wind farm to which they relate.

The costs are reviewed each year and amended as appropriate. Amendments to the discounted estimated costs are capitalised into the relevant assets and depreciated over the remaining life of those assets.

1.17 Share capital

Financial instruments that have been issued are classified as equity where they meet the definition of equity and confer on the holder a residual interest in the assets of the company. Ordinary shares are classified as equity.

Notes to the Financial Statements
For the Year Ended 31 December 2019

1. Accounting policies (continued)

While cash and cash equivalents are also subject to the impairment requirements of IFRS 9, there is no impairment loss identified.

1.15 Current and deferred tax

Income tax on the profit or loss for the year comprises current and deferred tax. Income tax is recognised in the Profit and Loss Account, except to the extent that it relates to items recognised directly in other comprehensive income or equity.

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Current tax is provided at current rates and is calculated on the basis of results for the year.

Deferred tax

Deferred tax is provided using the Balance Sheet liability method, providing for temporary differences between the carrying amounts of assets and liabilities for financial reporting purposes and the amounts used for taxation purposes.

Deferred tax assets are recognised only to the extent that it is more likely than not that there will be suitable taxable profits from which the future reversal of the underlying temporary differences can be deducted.

Deferred tax is measured at the tax rates that are expected to apply in the periods in which temporary differences reverse, based on tax rates and laws enacted or substantively enacted at the Balance Sheet date

1.16 Provisions

A provision is recognised if, as a result of a past event, the company has a present legal or constructive obligation that can be estimated reliably, and it is probable that an outflow of economic benefits will be required to settle the obligation. Provisions are determined by discounting the expected future cash flows at a pre-tax rate that reflects current market assessments of the time value of money and the risks specific to the liability. The unwinding of the discount is recognised in interest payable and similar charges.

Provision for asset retirement obligations

The provision for retirement and decommissioning of the wind farm represents the present value of the current estimate of the costs of closure of the wind farm at the end of its useful life. The estimated costs of retirement obligations are recognised in full at the outset of the asset life, but discounted to present values using a risk-free rate. The costs are capitalised in property, plant and equipment and are depreciated over the useful economic life of the wind farm to which they relate.

The costs are reviewed each year and amended as appropriate. Amendments to the discounted estimated costs are capitalised into the relevant assets and depreciated over the remaining life of those assets

1.17 Share capital

Financial instruments that have been issued are classified as equity where they meet the definition of equity and confer on the holder a residual interest in the assets of the company. Ordinary shares are classified as equity.

Notes to the Financial Statements
For the Year Ended 31 December 2019

2. Judgements in applying accounting policies and key sources of estimation uncertainty

The preparation of financial statements in conformity with FRS 101 requires management to make judgements, estimates and assumptions that affect the application of policies and reported amounts of assets and liabilities, income and expenses. These estimates and associated assumptions are based on historical experience and various other factors that are believed to be reasonable under the circumstances.

The estimates and underlying assumptions are reviewed on an ongoing basis. Judgements made by management in the application of FRS 101 that have a significant effect on the financial statements and estimates with a significant risk of material adjustment are:

1. *Carrying value of wind farm*

The directors consider the appropriateness of the carrying value of the wind farm on an annual basis. Further details are set out in note 9.

3. Turnover

An analysis of turnover by class of business is as follows:

	2019	2018
	€000	€000
Electricity sales	**4,894**	7,226
Other income	**76**	66
	4,970	7,292

Analysis of turnover geographically:

	2019	2018
	€000	€000
Island of Ireland	**4,970**	7,292
	4,970	7,292

4. Operating (loss)/profit

The operating (loss)/profit is stated after charging:

	2019	2018
	€000	€000
Depreciation of property, plant and equipment	**2,722**	2,766
Operating lease payments	**-**	210
Depreciation of right of use assets	**209**	-

Notes to the Financial Statements
For the Year Ended 31 December 2019

2. Judgements in applying accounting policies and key sources of estimation uncertainty

The preparation of financial statements in conformity with FRS 101 requires management to make judgements, estimates and assumptions that affect the application of policies and reported amounts of assets and liabilities, income and expenses. These estimates and associated assumptions are based on historical experience and various other factors that are believed to be reasonable under the circumstances.

The estimates and underlying assumptions are reviewed on an ongoing basis. Judgements made by management in the application of FRS 101 that have a significant effect on the financial statements and estimates with a significant risk of material adjustment are:

1. Carrying value of wind farm

The directors consider the appropriateness of the carrying value of the wind farm on an annual basis. Further details are set out in note 9.

3. Turnover

An analysis of turnover by class of business is as follows:

	2019	2018
	€000	€000
Electricity sales	4,894	7,226
Other income	76	66
	4,970	7,292

Analysis of turnover geographically:

	2019	2018
	€000	€000
Island of Ireland	4,970	7,292
	4,970	7,292

4. Operating (loss)/profit

The operating (loss)/profit is stated after charging:

	2019	2018
	€000	€000
Depreciation of property, plant and equipment	2,722	2,766
Operating lease payments	-	210
Depreciation of right of use assets	205	-

Notes to the Financial Statements
For the Year Ended 31 December 2019

5. Employees and directors' remuneration

The company has no employees (2018 - Nil).

Directors of the company are employees of ESB and are remunerated by ESB for their services. During the year, no directors received any emoluments (2018 – Nil) in respect of acting as directors of the company.

6. Interest payable and similar charges

	2019 €000	2018 €000
Interest payable to group undertakings	26	70
Financing charge on lease liabilities	16	-
	42	70

7. Taxation

	2019 €000	2018 €000
Corporation tax		
Current tax on (loss)/profit for the year	-	471
Total current tax	-	471
Deferred tax		
Origination and reversal of timing differences	(217)	(271)
Total deferred tax	(217)	(271)
Taxation on (loss)/profit on ordinary activities	(217)	200

Notes to the Financial Statements
For the Year Ended 31 December 2019

6. Employees and directors' remuneration

The company has no employees (2018 - Nil).

Directors of the company are employees of ESB and are remunerated by ESB for their services. During the year, no directors received any emoluments (2018 – Nil) in respect of acting as directors of the company.

6. Interest payable and similar charges

	2019	2018
	€000	€000
Interest payable to group undertakings	26	70
Financing charge on lease liabilities	16	-
	42	70

7. Taxation

	2019	2018
	€000	€000
Corporation tax		
Current tax on (loss)/profit for the year	-	471
Total current tax	-	471
Deferred tax		
Origination and reversal of timing differences	**(217)**	(271)
Total deferred tax	**(217)**	(271)
Taxation on (loss)/profit on ordinary activities	**(217)**	200

Notes to the Financial Statements
For the Year Ended 31 December 2019

7. Taxation (continued)

Factors affecting tax (credit)/charge for the year

The tax assessed for the year differs from (2018: differs from) the tax based on applying the standard rate of corporation tax in Ireland of 12.5% (2018 - 12.5%). The differences are explained below:

	2019 €000	2018 €000
(Loss)/profit on ordinary activities before tax	**(1,349)**	995
(Loss)/profit on ordinary activities multiplied by standard rate of corporation tax in Ireland of 12.5% (2018 - 12.5%)	**(169)**	124
Effects of:		
Fixed assets ineligible for depreciation	**125**	76
Group relief claimed for nil consideration	**(173)**	-
Total tax (credit)/charge for the year	**(217)**	200

7. Taxation (continued)

Factors affecting tax (credit)/charge for the year

The tax assessed for the year differs from (2018: differs from) the tax based on applying the standard rate of corporation tax in Ireland of 12.5% (2018 - 12.5%). The differences are explained below:

	2019	2018
	€000	€000
(Loss)/profit on ordinary activities before tax	(1,349)	995
(Loss)/profit on ordinary activities multiplied by standard rate of corporation tax in Ireland of 12.5% (2018 - 12.5%)	(169)	124
Effects of:		
Fixed assets ineligible for depreciation	126	76
Group relief claimed for nil consideration	(173)	-
Total tax (credit)/charge for the year	(217)	200

Notes to the Financial Statements
For the Year Ended 31 December 2019

8. Right of use assets and lease liabilities

	2019 €000
Right of use assets	
Balance at 1 January 2019	1,914
Remeasurement	53
Depreciation	(209)
Balance at 31 December 2019	1,758

	2019 €000
Lease liabilities	
Balance at 1 January 2019	(1,914)
Financing charge	(16)
Lease payments	157
Balance at 31 December 2019	(1,773)

Analysed as follows:

Current liabilities	(208)
Non-Current liabilities	(1,565)
	(1,773)

Notes to the Financial Statements
For the Year Ended 31 December 2019

8. Right of use assets and lease liabilities

	2019 €000
Right of use assets	
Balance at 1 January 2019	1,964
Remeasurement	53
Depreciation	(209)
Balance at 31 December 2019	1,758

	2019 €000
Lease liabilities	
Balance at 1 January 2019	(1,964)
Financing charge	(16)
Lease payments	157
Balance at 31 December 2019	(1,773)

Analysed as follows:

Current liabilities	(208)
Non-Current liabilities	(1,565)
	(1,773)

Notes to the Financial Statements
For the Year Ended 31 December 2019

9. Property, plant and equipment

	Plant and machinery €000
Cost or valuation	
At 1 January 2019	**71,420**
Additions	**898**
At 31 December 2019	**72,318**
Depreciation	
At 1 January 2019	**51,279**
Charge for the year	**2,722**
At 31 December 2019	**54,001**
Net book value	
At 31 December 2019	**18,317**
At 31 December 2018	20,141

Included within additions in 2019 is the capitalisation of an increase in the asset retirement provision. See *note 15 for more details.*

The directors have assessed the carrying value of the company's property, plant and equipment for impairment and consider that no write down of the asset is necessary.

Notes to the Financial Statements
For the Year Ended 31 December 2019

9. Property, plant and equipment

	Plant and machinery €000
Cost or valuation	
At 1 January 2019	71,420
Additions	898
At 31 December 2019	72,318
Depreciation	
At 1 January 2019	51,279
Charge for the year	2,722
At 31 December 2019	54,001
Net book value	
At 31 December 2019	18,317
At 31 December 2018	20,141

Included within additions in 2019 is the capitalisation of an increase in the asset retirement provision. See note 15 for more details.

The directors have assessed the carrying value of the company's property, plant and equipment for impairment and consider that no write down of the asset is necessary.

Notes to the Financial Statements
For the Year Ended 31 December 2019

10. Trade and other receivables

	2019 €000	2018 €000
Amounts owed by group undertakings	981	1,824
Other debtors	386	437
Tax recoverable	12	19
	1,379	2,280

11. Cash at bank and in hand

	2019 €000	2018 €000
Cash at bank and in hand	464	9,649
	464	9,649

12. Trade and other payables falling due within one year

	2019 *€000*	2018 *€000*
Amounts owed to group undertakings	9,392	20,824
Lease liabilities	208	-
Accruals	147	189
	9,747	21,013

All amounts fall due within one year. Included in amounts owed to group undertakings within one year at 31 December 2019 is an interest bearing loan repayable within one year of €Nil (2018 - €1.2 million).

13. Trade and other payables falling due after more than one year

	2019 €000	2018 €000
Lease liabilities	1,565	-
	1,565	-

Liabilities due after more than 5 years are €724 thousand.

10. Trade and other receivables

	2019	2018
	€000	€000
Amounts owed by group undertakings	981	1,824
Other debtors	386	427
Tax recoverable	12	19
	1,379	2,280

11. Cash at bank and in hand

	2019	2018
	€000	€000
Cash at bank and in hand	464	9,649
	464	9,649

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	2019	2018
	€000	€000
Amounts owed to group undertakings	9,392	20,824
Lease liabilities	208	-
Accruals	147	189
	9,747	21,013

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	2019	2018
	€000	€000
Lease liabilities	1,565	-
	1,565	-

Liabilities due after more than 5 years are €724 thousand.

Notes to the Financial Statements
For the Year Ended 31 December 2019

14. Deferred taxation

	2019 €000	2018 €000
At beginning of year	(1,655)	(1,926)
Credited to profit or loss	217	271
At end of year	(1,438)	(1,655)

The provision for deferred taxation is made up as follows:

	2019 €000	2018 €000
Accelerated capital allowances	(1,438)	(1,655)
	(1,438)	(1,655)

15. Other provisions

	Asset retirement provision €000
At 1 January 2019	6,998
Additions during the year	898
At 31 December 2019	7,896
Analysed as follows	
Non-current liabilities	7,896
At 31 December 2019	7,896

The estimated value of future retirement costs at the Balance Sheet date include physical dismantling, site remediation and associated costs.

14. Deferred taxation

	2019	2018
	€000	€000
At beginning of year	(1,656)	(1,925)
Credited to profit or loss	217	271
At end of year	**(1,439)**	(1,656)

The provision for deferred taxation is made up as follows:

	2019	2018
	€000	€000
Accelerated capital allowances	(1,439)	(1,656)
	(1,439)	(1,656)

15. Other provisions

	Asset retirement provision €000
At 1 January 2019	6,998
Additions during the year	898
At 31 December 2019	7,896
Analysed as follows	
Non-current liabilities	7,896
At 31 December 2019	7,896

The estimated value of future retirement costs at the Balance Sheet date include physical dismantling, site remediation and associated costs

Notes to the Financial Statements
For the Year Ended 31 December 2019

16. Share capital

	2019 €000	2018 €000
Authorised		
1,000,000 (2018 - 1,000,000) Ordinary shares of €1.00 each	1,000	1,000
Allotted, called up and fully paid		
100 (2018 - 100) Ordinary shares of €1.00 each	-	-

The holders of ordinary shares are entitled to receive dividends as declared from time to time and are entitled to one vote per share at meetings of the company.

17. Contingent liabilities and guarantees

The company has, in the normal course of business, provided decommissioning and reinstatement cash bonds. The bonds may be drawn against in the event that the company fails to properly restore the site of any project on termination of the project's useful life. The total value of these bonds at 31 December 2019 is €386 thousand (2018 - €386 thousand).

The company is party to a bank guarantee facility for €40 million along with a number of its fellow Group companies.

Following a ruling by the Court of Justice of the European Union, the Irish State is arranging for an environmental impact assessment of the current and future operations of the wind farm from the start of construction to decommissioning phase in its own right and in combination with other relevant development/activities. This environmental impact assessment is being carried out under the Planning and Development Acts under the Substitute Consent provisions to An Bord Pleanala. The directors of Gort Windfarms Ltd have been advised that a refusal by An Bord Pleanala will lead to a notice being served on Gort Windfarms Limited ordering the cessation of all activities or to carry out remedial measures.

18. Events since the end of the financial year

IAS 10 defines an adjusting event as an event that provides evidence of conditions that existed at the reporting date. A non-adjusting event indicates conditions that arose after the reporting date. The spread of the Covid-19 virus and its identification as a pandemic by the World Health Organisation does not provide additional evidence about the situation that existed at 31 December 2019, and it is therefore a non-adjusting event.

The Covid-19 pandemic has created turbulence in financial markets and economic uncertainty, which will impact individuals and businesses. Given the nature of the Company's business, the directors do not believe that Covid-19 will have a material impact on the company. However, given the inherent uncertainties, there is a risk that this could change as the financial impact of Covid-19 on the company's future financial performance becomes clearer.

19. Capital commitments

The company has no capital commitments at the Balance Sheet date (2018 - Nil).

16. Share capital

	2019	2018
	€000	€000
Authorised		
1,000,000 (2018 - 1,000,000) Ordinary shares of €1.00 each	1,000	1,000
Allotted, called up and fully paid		
100 (2018 - 100) Ordinary shares of €1.00 each	-	-

The holders of ordinary shares are entitled to receive dividends as declared from time to time and are entitled to one vote per share at meetings of the company.

17. Contingent liabilities and guarantees

The company has, in the normal course of business, provided decommissioning and reinstatement cash bonds. The bonds may be drawn against in the event that the company fails to properly restore the site of any project on termination of the project's useful life. The total value of these bonds at 31 December 2019 is €398 thousand (2018 - €386 thousand).

The company is party to a bank guarantee facility for €40 million along with a number of its fellow Group companies.

Following a ruling by the Court of Justice of the European Union, the Irish State is arranging for an environmental impact assessment of the current and future operations of the wind farm from the start of construction to decommissioning phase in its own right and in combination with other relevant development/activities. This environmental impact assessment is being carried out under the Planning and Development Acts under the Substitute Consent provisions to An Bord Pleanala. The directors of Gort Windfarms Ltd have been advised that a refusal by An Bord Pleanala will lead to a notice being served on Gort Windfarms Limited ordering the cessation of all activities or to carry out remedial measures.

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19. Capital commitments

The company has no capital commitments at the Balance Sheet date (2018 - Nil).

Notes to the Financial Statements
For the Year Ended 31 December 2019

20. Controlling party

The company is 100% owned by Hibernian Wind Power Limited, a company incorporated in Ireland. Hibernian Wind Power Limited is a wholly owned subsidiary of the Electricity Supply Board (ESB), established and operating in Ireland, which is the ultimate parent. The largest and smallest group into which the results of the company are consolidated is that headed by ESB and the consolidated financial statements of ESB are available to the public and may be obtained from Two Gateway, East Wall Road, Dublin 3, Ireland D03 A995.

21. Approval of financial statements

The board of directors approved these financial statements for issue on 22 June 2020.

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21. Approval of financial statements

The board of directors approved these financial statements for issue on 22 June 2020.

Appendix 4

Appendix 4

An Bord Pleanála

Mr. Martin Collins,
Derrybrien Development Society Limited,
Derrybrien,
Loughrea,
County Galway.

16th October 2008.

Dear Mr. Collins,

The Board has asked me to reply to your letters.

The Board is not in a position to advise you in relation to the implications of the judgement for the case in question. The more appropriate body to which you might address queries is the Department of the Environment, Heritage and Local Government.

I enclose for your information a copy of the circular letters issued by the Department of the Environment, Heritage and Local Government which set out the Department's advice to planning authorities to date, in relation to the implications of the judgement. Hopefully, these will be of assistance to you in terms of understanding the position.

Yours sincerely,

Chris Clarke,
Secretary.

64 Sráid Maoilbhríde,
Baile Átha Cliath 1.

Tel: (01) 858 8100
LoCall: 1890 275 175
Fax: (01) 872 2684
Web:http://www.pleanala.ie
email:bord@pleanala.ie

64 Marlborough Street,
Dublin 1.

Comhshaol, Oidhreacht agus Rialtas Áitiúil
Environment, Heritage and Local Government

Circular PD 6/08

8 October 2008

Subject: Implications of European Court of Justice ruling on retention planning permission for development requiring environmental impact assessment (Case C-215/06).

The purpose of this circular is to extend the advice provided to planning authorities in Circular PD 5/08 of 15 August 2008 (enclosing a copy of the above judgement) and the e-mail communication of 4 September 2008 issued to relevant Directors of Service in the main planning authorities.

The judgment

In its judgment of 3 July 2008, the Court ruled that the retention permission system as it applies in Irish law with regard to projects that require or may require an environmental impact assessment (EIA) under the EIA Directives does not comply with the Directives and needs to be amended. Irish legislation fails to ensure that EIAs will be conducted prior to the construction of a project and permits post development EIAs contrary to the intent of the Directives

As of 3 July 2008 any permission granted on applications/appeals for retention planning permission in respect of EIA development is in breach of Community law having been granted under a legislative system that the Court has found is inconsistent with the EIA Directives.

Ireland is obliged under the Treaty of the European Community to comply with the judgment or else face the consequence that the Commission will issue Article 228 proceedings and seek the imposition of penalties/fines. Ireland is therefore obliged to respond to the judgment by introducing legislation that will amend the existing

An Roinn Comhshaoil, Oidhreachta agus Rialtais Áitiúil, Teach an Chustaim, Baile Átha Cliath 1
Department of the Environment, Heritage and Local Government, Custom House, Dublin 1
Tel: 353 1 888 2000 LoCall: 1890 20 20 21 Fax: 353 1 888 2888 Web: www.environ.ie

planning legislation insofar as it permits retention permissions on projects requiring EIAs.

Proposed legislation

The Minister has received approval of Government to the drafting of the General Scheme of a Planning and Development (Amendment) Bill, which will, among other things –

- remove the possibility of retention for unauthorised development which would otherwise have been subject to environmental impact assessment, other than in exceptional circumstances, and
- revoke the current 7 year time limit within which enforcement action may be taken in respect of unauthorised development (section 157(4) of the Planning and Development Act 2000).

In the interim, more immediate legislative measures with respect to retention planning applications for projects that fall under the EIA Directive are under consideration. The intention to make such legislation was notified to the European Commission on 3 September 2008, in Ireland's initial formal response to the ECJ judgement.

More immediately however, there is the issue of necessary action in relation to relevant planning applications (i.e. applications for retention permission for development which required an EIA), falling into two categories –

- applications currently awaiting determination by planning authorities; and
- applications which have been determined favourably since 3 July 2008.

Applications awaiting determination

It is understood that some planning authorities may have incorrectly taken the view that they must comply with and operate the relevant planning legislation as it currently stands, and therefore have to continue to make decisions on EIA/retention applications. The case law of the European Court of Justice makes it clear that administrative bodies such as planning authorities and An Bord Pleanála, being emanations of the State, are bound to comply with Community law and if necessary to disapply national law.

Accordingly, in respect of applications for permission for the retention of unauthorised development where such development should have been subject to prior EIA and where such development comes within Annex I of the Directive, planning authorities should return the application as invalid, on the basis that there is no jurisdiction to grant retention planning permission in those circumstances. That step should be taken upon receipt of the application. Applications that have been received and are currently being processed should be returned in the same way. The relevant body should refer to the judgment of the court in Case C-215/06 when communicating with applicants for retention permission.

In respect of applications for permission for the retention of unauthorised development where such development comes within Annex II of the Directive, planning authorities should proceed to decide whether an EIA is necessary or not ("screening decision"). If an EIA is not considered necessary, then the planning authority should proceed to deal with the application in the normal course. If, conversely, the planning authority decides that an EIA is necessary it should take the steps referred to in the previous paragraph.

The screening decision as to whether an EIA is necessary or not should be made as it would be made in the normal course of events, *i.e.* on the basis of the criteria set out at Schedule 7 of the Planning and Development Regulations, 2001.

Relevant retention planning permissions granted since 3 July 2008

It would appear that some relevant permissions have been granted since 3 July 2008 and that the planning authorities concerned may not have brought to the attention of the applicants the judgment of the ECJ and its potential implications for the permissions being granted.

Subject to the final paragraph, a recipient of such any retention permission issued since 3 July 2008 in respect of developments requiring an EIA must be informed as follows.

- The ECJ delivered a judgment in Case C-215/06 Commission v Ireland on 3 July 2008. The effect of the judgment should be briefly outlined.

- As a result of the judgment the permission granted is in breach of Community law having been granted under a legislative system that the Court has found is inconsistent with the EIA Directives.
- The applicant is advised not to act upon the permission.

Such notification should be sent by registered post to the applicant for the permission and copied to any person required by the Planning Acts to be notified of a decision on the application.

It is the Department's understanding that a notification need not be made in respect of a permission granted since 3 July for the continued operation of a quarry in respect of which an application for planning permission was made under and in strict accordance with section 261(7) of the 2000 Act, i.e. an application, with an environmental impact statement, made within such period as was specified by or agreed with the planning authority for the purposes of the subsection in respect of a quarry that commenced operation before 1 October 1964. (By extension, any such application currently being processed may proceed to determination).

Liam Whelan
Principal Officer
Planning System

To all planning authorities.

c.c. An Bord Pleanála

Circular PD 5/08

15 August 2008

European Court of Justice ruling on retention planning permission for development requiring environment impact assessment, and the specific case of a windfarm development at Derrybrien in Galway.

The purpose of this circular is to draw the attention of planning authorities to a recent European Court of Justice (ECJ) judgement (Case-215/06 – see Appendix 1). The judgement in this case, that Ireland had failed to fulfil its obligations under Articles 2, 4, 5 and 10 of Directive 85/337/EEC, as amended by Directives 97/11/EC and 2003/35/EC - the "EIA Directive" - should be carefully considered by planning authorities for the purpose of dealing with planning applications involving projects that fall under the scope of the Directive, as amended.

This circular is advisory, and not a legal interpretation of the judgement, which should be referred to the authority's law agent for detailed consideration.

Overview of the Court Findings

There were two matters addressed in the ECJ judgement – the availability under Irish planning legislation of retention planning permission for development requiring environmental impact assessment, and the specific case of a windfarm development at Derrybrien, County Galway.

1. Retention Planning and Enforcement

In this regard, the ECJ ruling was twofold - firstly that Ireland had failed to adopt all measures necessary to ensure that projects which are within the scope of the EIA Directive are, before they are executed in whole or in part, first, considered with regard to the need for an EIA, and, secondly, where those projects are likely to have a

significant impact on the environment by virtue, inter alia, of their nature, size or location, that they are assessed in accordance with Articles 5 to 10 of the EIA Directive.

The ECJ concluded that in Ireland retention planning permission could be granted for unauthorised projects which are covered by the EIA Directive, after those projects were completed. The ECJ found that while Community law cannot preclude the use of retention planning in certain cases, retention planning should not offer developers the opportunity to circumvent the EIA Directive, and that retention should remain the exception.

The ECJ stated that Member States are required to take appropriate action to counteract the unlawful consequences of a breach of Community law and that Irish planning authorities are obliged to take measures to remedy situations where an EIA should have been carried out prior to the granting of planning permission.

2. Derrybrien Wind Farm

The ECJ ruled that Ireland had failed to adopt all measures necessary to ensure that the planning permissions granted, and the execution of, wind farm developments and associated works at Derrybrien were preceded by an assessment with regard to their environmental effects in accordance with Articles 5 to 10 of the EIA Directive as amended. While wind-farms were not listed under Annex's I or II of the Directive at the time of this development, the initial works at Derrybrien included the extraction of peat/minerals of a non metalliferous or energy producing nature, and road construction, both of which were listed in Annex II of the Directive.

The ECJ found that despite the fact that the peat extraction and road construction may have been of secondary importance vis-à-vis the wind farm construction, as a whole, this did not mean, by virtue of that fact alone, that those projects were not likely to have significant effects on the environment. In this specific case, the ECJ found that the peat extraction and road construction should have been regarded as likely to have significant impacts on the environment and should have been subject to an assessment.

The ECJ also found that the environmental impact statements that were provided by the developer in this case were deficient. In particular, they did not examine soil stability when excavation was involved. The Court also noted that, contrary to Irish law, deforestation at Derrybrien authorised in May 2003 was not preceded by an assessment. Annex III of the EIA Directive refers to the risks inherent in projects that should be considered when examining the requirement for an assessment. One such risk is the environmental sensitivity of the geographical area, which must be considered having regard, inter alia, to the absorption capacity of the natural environment paying particular attention to mountain and forest areas.

The ECJ further ruled that applications for planning permission for the wind farm submitted after the EIA Directive was amended in April 1998 should have been subject to EIA as wind farms were specifically listed in Annex II 3(i) of the amended Directive and Annex II 13 refers to the requirement to screen for EIA any extension or change to a project that is covered by the Directive, but has already been authorised.

Action on foot of the ECJ Judgement

Ireland is obliged, before 3 September, to notify the European Commission of the measures that the relevant authorities here have taken in order to comply with the terms of the ECJ judgement.

The Minister has received approval of Government to the drafting of the General Scheme of a Planning and Development (Amendment) Bill, which will, among other things –

- remove the possibility of retention for unauthorised development which would otherwise have been subject to environmental impact assessment, other than in exceptional circumstances, and
- revoke the current 7 year time limit within which enforcement action may be taken in respect of unauthorised development (section 157(4) of the 2000 Act).

In the interim, more immediate legislative measures with respect to retention planning applications for projects that fall under the EIA Directive are under consideration.

For their part, planning authorities are requested to analyse the findings of the ECJ in this case, and reflect them in their approach to applications for planning permission for projects that require, or may require, EIA. The Development Management Guidelines (June 2007) address EIA in Chapter 4, while Chapter 10 deals with enforcement of planning control.

Appendix 5

Appendix 5

Microseismic and Infrasound Monitoring of Low Frequency Noise and Vibrations from Windfarms

Recommendations on the Siting of Windfarms in the Vicinity of Eskdalemuir, Scotland

Professor Peter Styles, Dr Ian Stimpson, Mr S Toon, Mr R England, Mr M Wright

Applied and Environmental Geophysics Research Group
Earth Sciences and Geography
School of Physical and Geographical Sciences
Keele University
Keele
Staffs ST5 5BG

18 July 2005

Microseismic and Infrasound Monitoring of Low Frequency Noise and Vibrations from Windfarms

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18 July 2005

Abstract

In order to meet, and in fact exceed, Kyoto targets, the UK government has set a challenging target of reducing the UK's carbon dioxide emissions by 60% by 2050. The development of renewable energy, especially wind power, will be an important contributor to the success of that policy.

Some 40% (in excess of 1 Gigawatt), of this wind generation capacity, was planned for the southern uplands of Scotland. However, the United Kingdom seismic monitoring site which constitutes our component of the Comprehensive Test Ban Treaty compliance for nuclear testing is situated at Eskdalemuir near Langholm in the Scottish Borders. The Ministry of Defence therefore placed a precautionary blanket objection to any wind farm developments within 80 km of Eskdalemuir in case this compromised UK capability to detect distant nuclear test and breached our agreement under the CTBT. This effectively removed at least 40% of the UK renewable wind resource identified by the DTI.

Because of our previous, unique experience in monitoring seismic vibrations from wind turbines in the UK, the Applied and Environmental Geophysics Group of the School of Physical and Geographical Sciences at Keele University, were asked by the MOD, the DTI and the British Wind Energy Association to investigate whether there was a solution to this impasse. By carrying out a detailed programme of seismic and infrasound measurements in the vicinity of several wind farms in Scotland we have been able to identify the characteristic frequencies and mode of propagation of seismic vibrations from wind turbines and develop a model for the integrated seismic vibration at the Eskdalemuir site which will be created by any distribution of wind farms. By carefully considering the present ambient background experienced at the monitoring site it has been possible to set a noise budget which is permissible at Eskdalemuir without compromising its detection capabilities, and we have demonstrated that at least 1.6 GW of planned capacity can be installed and have developed software tools which allow the MOD and planners to assess what further capacity can be developed against criteria established by this study.

Abstract

In order to meet, and in fact exceed, Kyoto targets, the UK government has set a challenging target of reducing the UK's carbon dioxide emissions by 60% by 2050. The development of renewable energy, especially wind power, will be an important contributor to the success of that policy.

Some 40% (in excess of 1 Gigawatt), of this wind generation capacity, was planned for the southern uplands of Scotland. However, the United Kingdom seismic monitoring site which constitutes our component of the Comprehensive Test Ban Treaty compliance for nuclear testing is situated at Eskdalemuir near Langholm in the Scottish Borders. The Ministry of Defence therefore placed a precautionary blanket objection to any wind farm developments within 80 km of Eskdalemuir in case this compromised UK capability to detect distant nuclear test and breached our agreement under the CTBT. This effectively removed at least 40% of the UK renewable wind resource identified by the DTI.

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Introduction

The Eskdalemuir Seismic Array (EKA)

Eskdalemuir in the Scottish Borders is the location of a monitoring facility operated by the British Geological Survey where seismological, magnetic and other environmental parameters are monitored because the site is located in a very quiet magnetic and seismic environment. Measurements include horizontal and vertical magnetic field components and declination, total field intensity, and absolute values of the geomagnetic field. Three-component seismological measurements are made at the sites. An environmental monitoring facility operates at Eskdalemuir, monitoring soil and air temperature, wind speed and direction; UV and nuclear radiation; sunshine; concentrations of ozone, SO2 and NOx gases; rainfall; humidity and surface wetness.

In addition the UK seismological array **(EKA)** operated by AWE Blacknest is also sited at Eskdalemuir. The facility at Eskdalemuir is part of the auxiliary seismic network of the International Monitoring System (IMS) being set up to help verify compliance with the Comprehensive Test Ban Treaty (CTBT) which bans nuclear-test explosions. So far the CTBT has been signed by 175 states, and ratified by 121. The UK and France were the first nuclear-weapons states to ratify the treaty. The facility at Eskdalemuir is to be upgraded to be an alternate primary IMS seismic station. The treaty requires that States Parties shall not interfere with the verification system, of which Eskdalemuir is an element.

The seismometer array at Eskdalemuir (EKA) (Figure 1) became operational on the 19 May 1962. The recording station comprises a recording laboratory, a seismological vault and an array of seismometers installed in pits spaced over an area 10 km square. The laboratory is situated on the eastern side of the Langholm-Innerleithen road (B709) about 30 km north of Langholm and 3 km north of the Eskdalemuir meteorological observatory. The seismological vault is about 400 m east south east of the laboratory, and the array lies to the east in the form of a cross with its centre, about 2.5 km from the laboratory. The latitude of the point of intersection of the two lines of the array is 55° 20' north and the longitude is 03° 09½' west. The array is situated across the watershed between tributary headstreams of the Teviot and Tweed flowing to the north-east, and headstreams of the Esk which generally flow to the south-west. The ground surface is largely open rolling moorland and forest plantations, which in is in many places peat covered. The altitude of the seismic pits varies from c 210 m to c 430 m. The isolated location ensures that microseismic interference is kept to a minimum. While there is very little light vehicular traffic on the Langholm-Innerleithen road logging trucks and heavy forestry machinery do use this road albeit intermittently.

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The seismometer array at Eskdalemuir (EKA) (Figure 1) became operational on the 19 May 1962. The recording station comprises a recording laboratory, a seismological vault and an array of seismometers installed in pits spaced over an area 10 km square. The laboratory is situated on the eastern side of the Langholm-Innerleithen road (B709) about 30 km north of Langholm and 3 km north of the Eskdalemuir meteorological observatory. The seismological vault is about 400 m east south east of the laboratory, and the array lies to the east in the form of a cross with its centre, about 2.5 km from the laboratory. The latitude of the point of intersection of the two lines of the array is 55º 20' north and the longitude is 03º 09½' west. The array is situated across the watershed between tributary headstreams of the Teviot and Tweed flowing to the north-east, and headstreams of the Esk which generally flow to the south-west. The ground surface is largely open rolling moorland and forest plantations, which in is in many places peat covered. The altitude of the seismic pits varies from c 210 m to c 430 m. The isolated location ensures that microseismic interference is kept to a minimum. While there is very little light vehicular traffic on the Langholm-Innerleithen road logging trucks and heavy forestry machinery do use this road albeit intermittently.

The Array

The array consists of two straight lines of instrument pits intersecting at right angles. Each line has eleven pits (of which only ten on each line are used) approximately 1000 yards apart. Each line intersects the other off centre, forming a cross whose four arms are unequal. The lines run roughly from SSW to NNE and from WNW to ESE. The overall length of each line is approximately 9 km. The seismic pits have been excavated through an overburden of superficial soil (peat in some instances) or thickness from 0 to 1 m into shales of the Llandovery Series (Silurian age). These were folded during late Silurian times, and as a result of the lateral pressures exerted are highly cleaved. Buried recording cables connect each instrument pit to the recording laboratory.

Each pit on the array contains one vertical Willmore MK2 short period seismometer. The signals from the seismometers are transmitted via buried cables back to the recording laboratory where it is then digitised using 3 separate CMG-DM16-R8 digitisers. A central acquisition system then records this data. In addition the seismic vault at Eskdalemuir contains four seismometer plinths. Currently a broadband 120s to 50Hz GURALPCMG-3TD is installed in the vault. The data is transmitted from the vault to the recording station using a leased line modem. Data from this acquisition computer is then transmitted on two separate networks via TCP/IP to a VSAT system link to CTBTO in Vienna and to a local network. From the local network the data is transmitted via VSAT to AWE Blacknest and a second computer records the data locally onto a tape backup system. A study of the background noise at Eskdalemuir was undertaken in 1997/8 as an AWE report (Trodd 1998). The winter and summer RMS averages of the unfiltered summed channels of the array were found to be 8.96 and 1.65 nanometres respectively.

EKA has two arms, each of ten seismometers. The array comprises sensitive seismometers that have recorded signals associated with about 400 nuclear explosions (up to 15,000 km away from EKA). Why is Eskdalemuir so good at this? The main reason is that it occupies a seismically very quiet site (one of only three ever considered in the UK, (Bache et al., 1986)), approaching the low noise model of Petersen (1993), and its history of operation. EKA is the longest operating steerable array in the world has long experience of detecting events over 42 years, is well calibrated, and has detected signals from areas of low seismicity. It has detected signals generated from the detonation of c 100 tonnes of conventional explosive in Kazakhstan. The seismometers are deployed in shallow pits which means that the constructive interference between the up-going and reflected P-waves (compressional-dilatational first arrivals) from the free surface , effectively doubles the amplitude for vertically arriving (teleseismic) phases from distant events in addition to the increase in signal to noise ratio obtained by stacking the 20 seismometer records.

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EKA(AS104) was offered by the UK during negotiations with the Comprehensive Test Ban Treaty Organisation (CTBTO) as an auxiliary station and EKA was designated a substitute for a primary seismic station (CTBT/WGB-10/1,1999). EKA data is widely used by the international research community in the pre-Entry into Force (EIF) phase

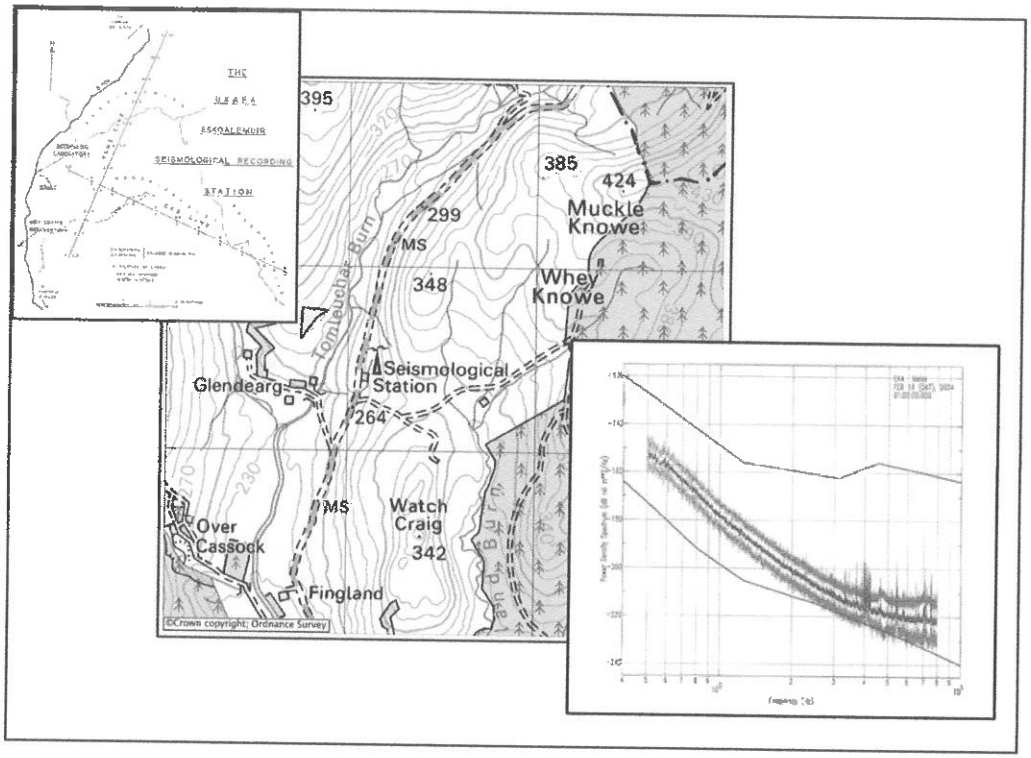

Figure 1 The Location of the EKA seismological array, the detailed layout of the arms of the array and the noise spectrum at the array which closely approaches the Low Noise Model of Petersen (1993).

Figure 2 indicates the detection sensitivity of the Eskdalemuir array as it clearly show the discrimination of the detonation of 100 T of conventional explosive in Kazakhstan a distance of some 5250 km away! The subsequent table which shows the statistics of ambient background is a partial explanation of this exceptional sensitivity as the median noise during a windy period was only 0.25 nm. This, together with years of historical data, makes EKA an unparalleled resource for forensic seismology, i.e. the discrimination of distant nuclear detonations.

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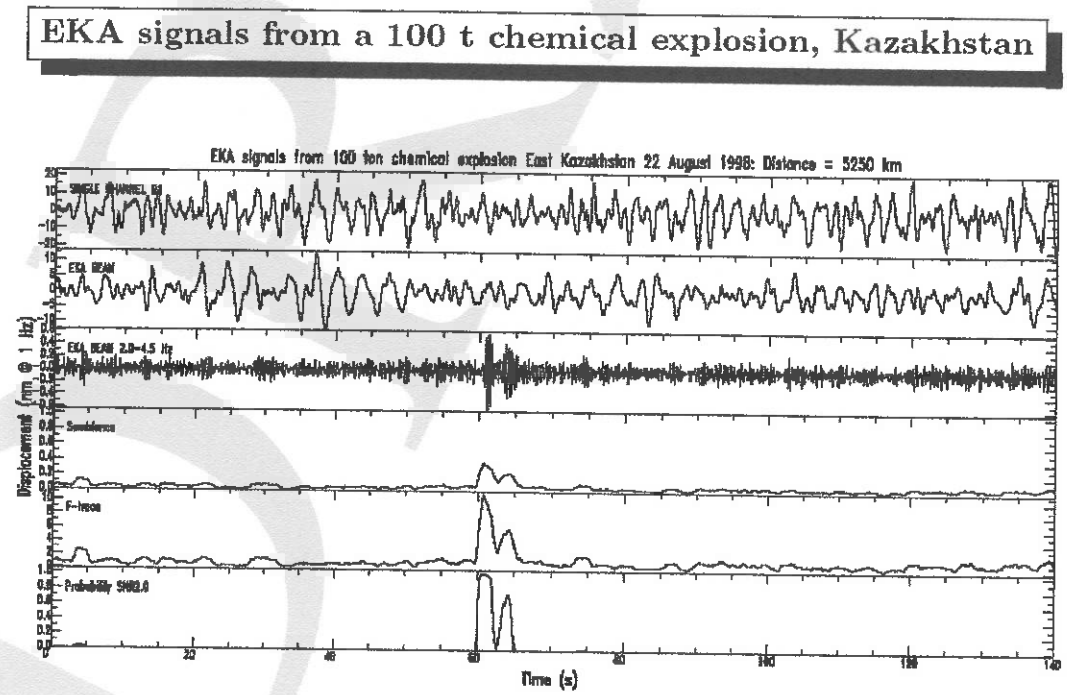

Passband (Hz)	Quiet rms (nm)			Windy rms (nm)		
	Mean	SD	Median	Mean	SD	Median
1.0-2.0	1.425	0.144	1.454	1.900	0.331	1.857
2.0-3.0	0.245	0.116	0.202	0.497	0.292	0.454
3.0-4.0	0.147	0.097	0.111	0.341	0.220	0.317
4.0-5.0	0.116	0.079	0.088	0.271	0.178	0.253

Quiet times: 2003/12/08 02:00 (1), 2003/12/08 10:00 (1) , 2003/12/08 22:00 (2), 2003/12/09 02:00 (1), 2003/12/09 10:00 (1), 2003/12/09 22:00 (1).

Windy times: 2003/12/01 22:00 (16). 2003/12/02 02:00 (19), 2003/12/02 03:00 (20), 2003/12/02 10:00 (11), 2003/12/02 11:00 (9), 2003/12/06 10:00 (7).

Figures in parenthesis are mean wind speed in knots (1 knot = 0.51 m s^{-1}) at Eskdalemuir weather station (source: Met. Office website).

Figure 2 Statistics of ambient microseismic noise at Eskdalemuir during quiet and noisy wind periods and an example of the detection capability of the array in the 2 to 4.5 Hz band (from Bowers (2004) , Elliot and Bowers 2004).

The International Monitoring System (IMS) network will eventually comprise:

1. 50 primary seismic stations,
2. 120 auxiliary seismic stations,
3. 60 infrasound stations,
4. 11 hydroacoustic stations,
5. 80 radionuclide stations

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Renewable Energy in the Southern Uplands of Scotland and its implications for Seismic Verification.

The hills of the Lake District and Scottish Borders constitute a major wind resource and some existing wind farms have been operating for many years and many new facilities are planned. As part of the UK renewable energy targets set in order to meet the Kyoto protocol, in excess of 1 GigaW of wind energy capacity are planned for the Southern Uplands of Scotland, a valuable wind resource area. In late December 2003 AWE/MoD recognised that many wind farm developments are planned in the vicinity of the Eskdalemuir International Monitoring Site which constitutes part of the CTBTO monitoring network and that the discrimination capabilities of it might be affected by possible vibration intrusion by wind turbines erected in proximity to the array and that this might have implication for its performance in discriminating nuclear weapons tests.

Wind turbines are large vibrating cylindrical towers, strongly coupled to the ground with massive concrete foundation, through which vibrations are transmitted to the surroundings and with rotating turbine blades generating low-frequency acoustic signals which may couple acoustically into the ground. This may occur in several ways:

1. As a cantilever carrying the nacelle/blade mass, with frequencies typically less than 1Hz, depending on height of tower.
2. As a torsional oscillator at low frequencies.
3. As a complex distributed system at higher frequencies

Additionally, the blade tower interaction is a source of pulses at a low repetition rate, which contain components in the infrasound region. The local and surrounding geology especially layering may play an important part in determining vibration transmission. Energy may propagate via complex paths including directly through the ground or principally through the air and then coupling locally into the ground and it is hope that this study will be able to clarify this.

The site is of national and international significance and requires protection. Because of uncertainty at that time as to the actual levels of seismic vibration generated by large UK wind farms, the Ministry of Defence implemented interim proposals for 30km and 80km cautionary distances. Holding objections were placed on wind farm development within a radius of 30 km from the seismic detection facility near Eskdalemuir and developments up to 80 km radius would be re-examined.

Potential Scottish Wind farm developments which might be affected by this objection are:

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Between 30 km and an 80 km. radius:

Auchencorth Moss , Bowbeat, Broadmeadows, Carcant, Soutra, Fallagore Ridge, Black Hill. Clints Hill, Lauder Common/Sell Moor, Long Park (mast), Crystal Rig, Monashee , Dalswinton and Kyle Forest.

In addition, many Cumbrian and Northumbrian windfarm sites or planned developments lie within or close to the 80 km re-examination zone.

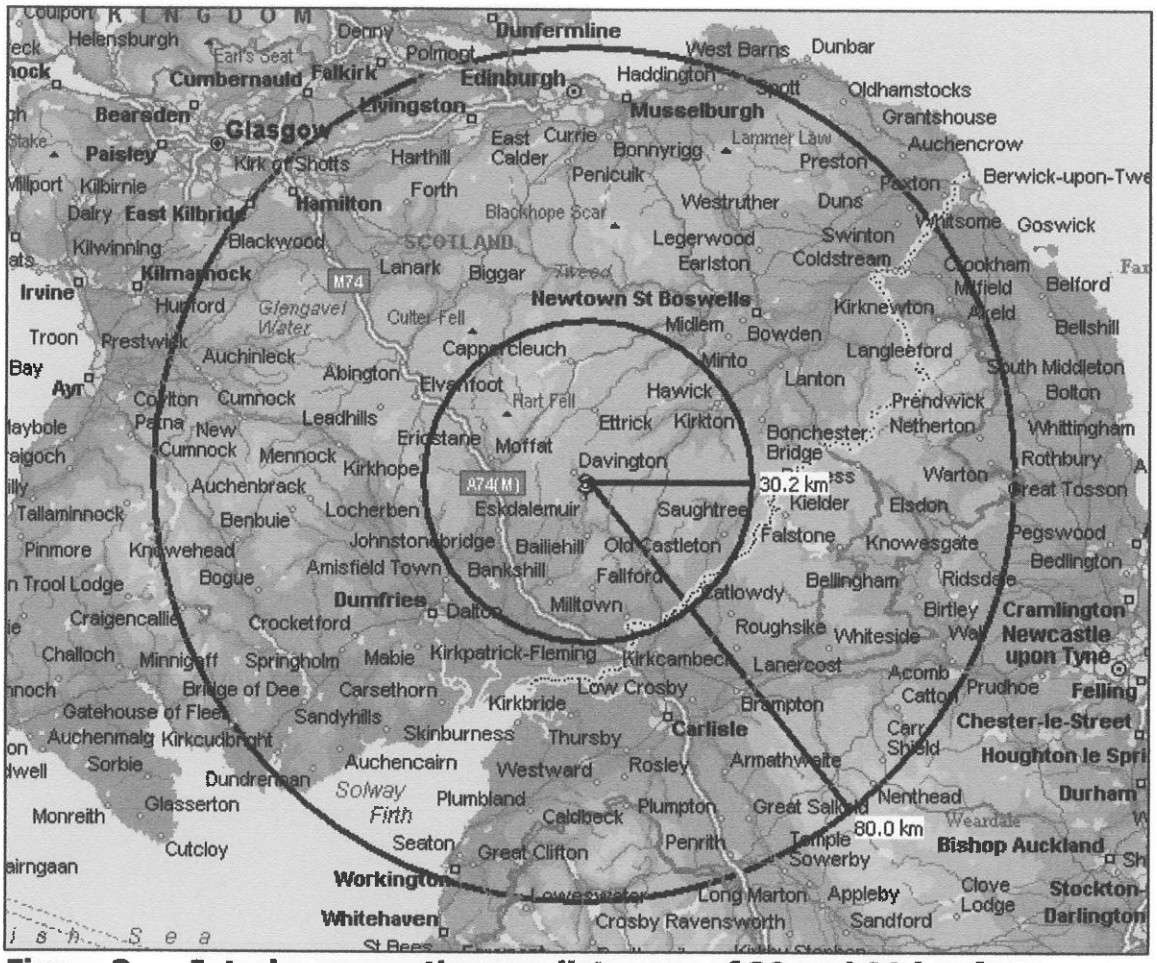

Figure 3 Interim precautionary distances of 30 and 80 km from Eskdalemuir indicating the large areas (2800 km^2 and 20000 km^2) which would be excluded from windfarm development.

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It was recognised that further research was urgently required in order to establish guidelines for future wind-farm development in the vicinity of EKA. The Eskdalemuir Working Group was established to ensure the guidelines had a sound scientific basis and to investigate whether these are the appropriate distances and if necessary develop guidelines for this protection.

Very few studies of the microseismic vibrations from wind farms have been carried out anywhere. The only UK studies prior to this were carried out by the Microseismology Research Group at the University of Liverpool (led by Dr Peter Styles)

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In addition a NERC funded studentship was awarded for Microseismic Investigation of Infrasonic Environmental Noise and Vibration (Rushforth, I, PhD Liverpool (2002), While vibrations were found to be well below the BS standards for disturbance to populations they were not interpreted in the light of possible disturbance to ultra-sensitive monitoring facilities.

Details of the various experiments which constitute these studies follow.

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Previous Microseismic Monitoring of Wind farms in the UK

1 St. Breock Downs, Cornwall, SW 970 683, 50° 28′ 33″, 04° 51′ 40″

Rated Power: 4.95MW
Wind Turbines: 11 Bonus 450kW
Rotor Diameter: 36 metres
Hub Height: 35m
Connection Voltage: 33 kV
Site Design and Environmental Impact Assessment: EcoGen
Planning Consent: August 1993
Developer: EcoGen SeaWest Tomen Joint Venture
Commissioning: June - July 1994
Owner: PowerGen

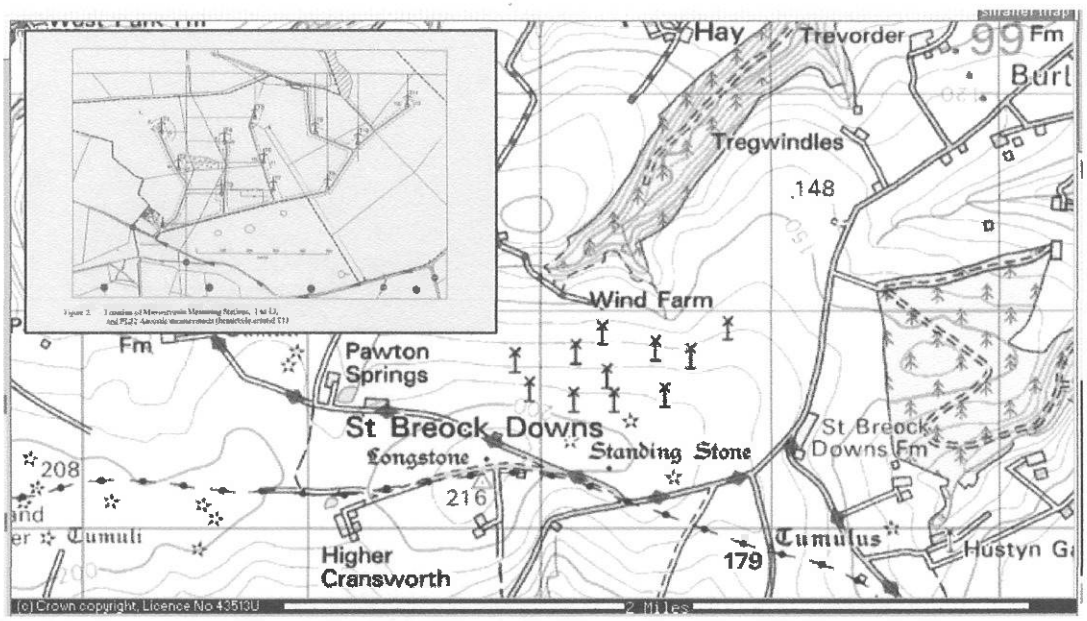

Figure 4 Location of recording stations for the St Breock Downs experiments

A sequence of three experiments were carried out

1 Deployment of VIBROSOUND SP1 24-bit Digital Recorder with LENNARTZ LE-3D/1 Seismometers in buried pits. Two sets of three-component seismometers were used with specifications and calibrations given in Appendix 1. These were deployed from 18 March until 30 March in order to record data from a wide range of wind speed and directions and were the principal instruments on which this investigation was based. Measurements were made at distances of 100 metres, 50 metres and 25 metres for Turbine 1 (positions 1, 2 and 3 on Figure 3).

Figure 4 Location of recording stations for the St Breock Downs experiments

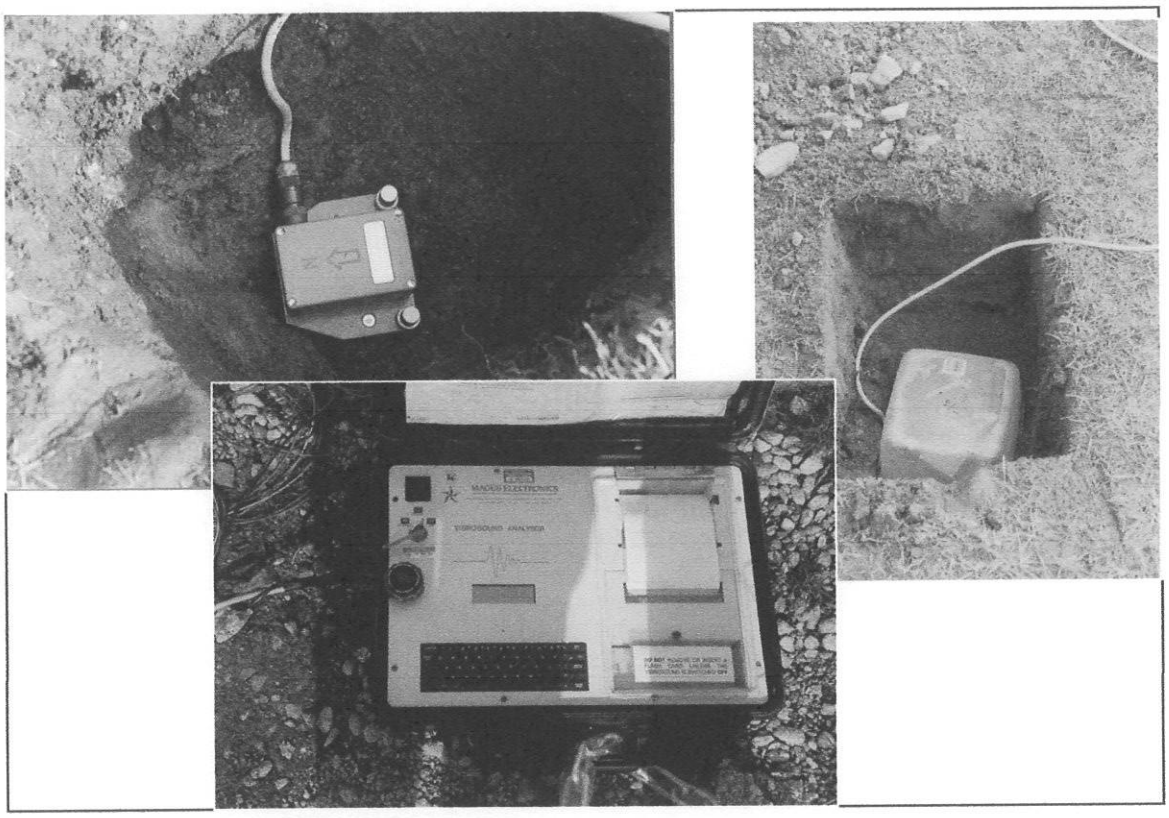

Figure 5 Recording Equipment for experiment 1

2 Deployment of GEOSENSE DV1 three component digital seismographs with direct PC interface. This was a portable, compact three-component instrument with a bandwidth from 0.2 Hz to 64 Hz which could be quickly and easily moved from site to site. This was ideal for measuring the variation in the low-frequency signal form different turbines and at a range of distances. This experiment took place during the period 18 to 20 March 1996 and measurements were made at positions 4 through 13 on Figure 4 and also at a distance of c 1 kilometre at Pawton Springs Farm (Figure 4).

3 Measurement of Acoustic Noise Level Variation with azimuth around a wind-turbine using Diagnostic Instruments PL22 FFT Frequency Analyzer and a Cirrus Research Ltd ZE901-40F with MK 182LF Microphone Capsule. This was supplied directly from the manufacturers with a dedicated calibrator. This instrument was also used to measure the actual machinery vibration using B&K Type 5318 accelerometers mounted on the base of Turbine 1. (Figure 6).

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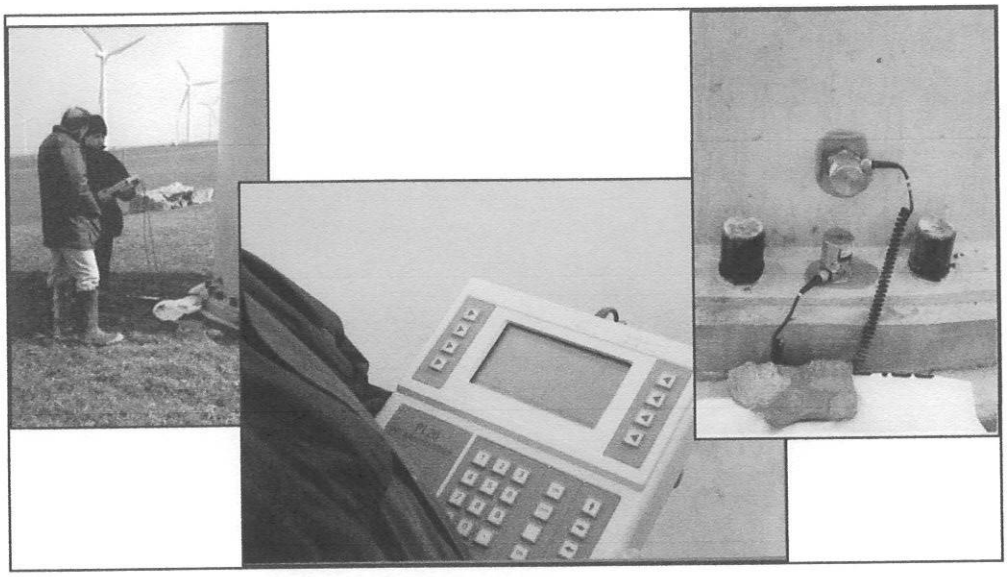

Figure 6 Recording equipment for the on-tower experiment 3

The following objectives were addressed: and the following main conclusions were reached:

1 To determine whether low frequency vibrations (down to 0.1 Hz) are transmitted through the ground from a modern wind farm and if so to measure their amplitude and frequency content.

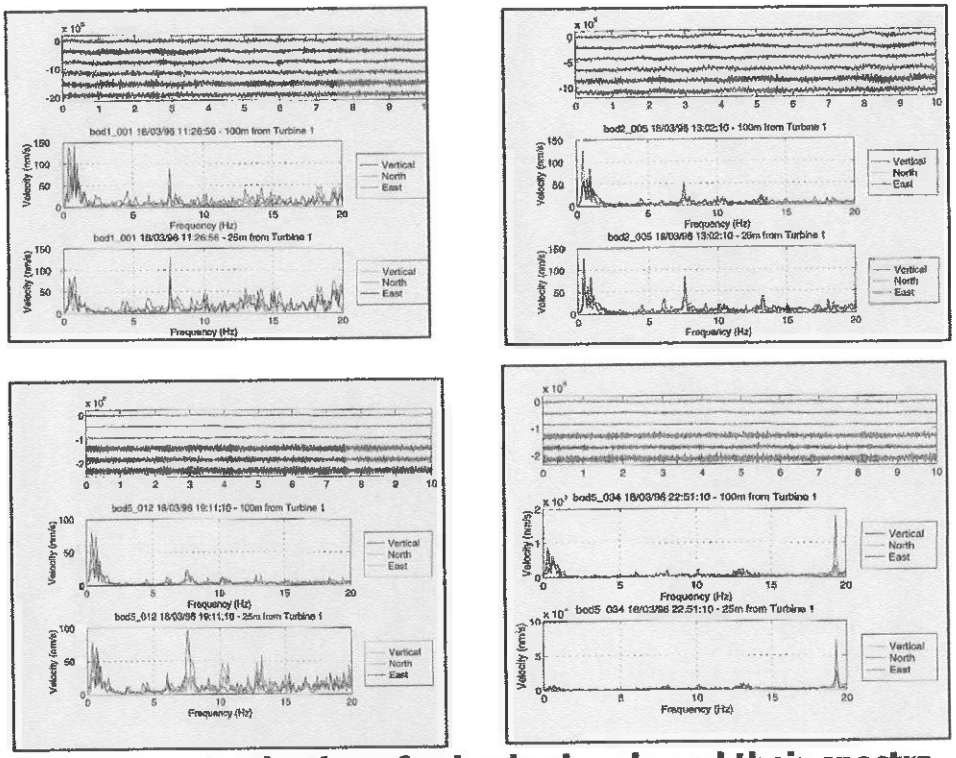

Figure 7 A selection of seismic signals and their spectra measured at St Breock Downs

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Clear harmonic components at multiples of 0.5 Hz were observed on the majority of the spectra with particular peaks at 0.5, 3.0, 4.5, 6.0, 7.5 Hz and higher frequencies at levels of up to 250 nanometres s^{-1} (0.25 microns s^{-1}) and general levels of 50 to 80 nanometres s^{-1} (Figure 6) . The presence of so many harmonics which are multiples of the blade passing frequency and the clear attenuation of signal amplitude with distance especially for the 7.5 Hz component is a prima facie argument that the signals are being generated from the wind turbines and although the levels are small they can easily be detected on appropriate sensors. The 1.5 Hz component is not the strongest harmonic as might have been suspected.

2 To make measurements at a range of distances to determine the variation in frequency and amplitude of low-frequency vibrations

Measurements were made at distances of 25, 50 and 100 metres from Turbine 1 and the frequencies above 3.0 Hz were seen to attenuate with distance with higher frequencies decaying faster as expected. During the sequential shutdown frequencies were observed over a distance of some 500 to 700 metres and significant attenuations noted with the exception of the very lowest frequencies which in fact increased in frequency. This may be a due to interference effects which were less with fewer turbines in operation or the harmonic may be sourced from elsewhere. The 0.5 Hz signals were detected at a distance of c 1 kilometre from St Breocks Down at Pawtonsprings Farm.

3 To make measurements for a range of wind speeds to determine the variation in frequency and amplitude of low-frequency vibrations

Measurements were made over a range of wind speeds from c 7 ms^{-1} to 14 ms^{-1} at a constant direction (Figure 8). The amplitude of the harmonics generally increase with increasing windspeed. This is particularly evident for the 0.5 Hz harmonic, the 3 Hz harmonic and the 7.5 Hz harmonic. However and rather surprisingly the amplitude of the 6 Hz harmonic shows an inverse relationship: as the wind speed rises the amplitude of this harmonic falls. It seems that the partition of energy between the 6 and 7.5 Hz harmonics in particular is strongly dependent on wind-speed. Notwithstanding the reservations expressed concerning the nature of the ultra-low vibrations, the increase in amplitude of the 0.5 Hz component with wind speed suggests that it does have a source which is related in some way to the wind turbine farm.

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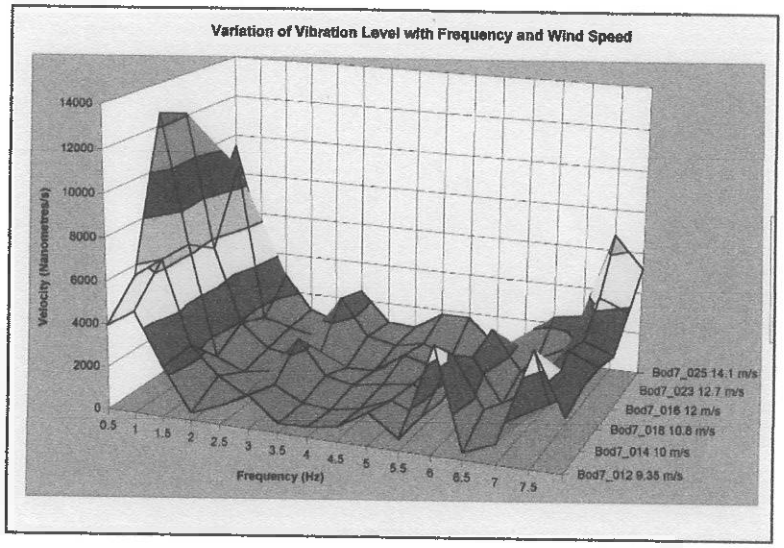
observed with levels varying by about a factor two. The variation had the same spatial pattern for most frequencies and this pattern correlated with acoustic measurements made at closer angular increments within the limitations of the data



Event Number	Wind Speed	Wind Direction
Bod7_012	9.35	119.5
Bod7_014	10.0	113
Bod7_016	12	123
Bod7_018	10.8	110
Bod7_023	12.7	118.5
Bod7_025	14.1	120

Figure 8 Variation of Amplitude and frequency with windspeed

5 To investigate the variation of amplitude and frequency as a sequence of wind turbines were sequentially switched off

observed with levels varying by about a factor two. The variation had the same spatial pattern for most frequencies and this pattern correlated with acoustic measurements made at closer angular increments within the limitations of the data

Event Number	Wind Speed	Wind Direction
Bod7_012	9.5	119.5
Bod7_014	10.0	113
Bod7_016	12	123
Bod7_018	10.8	110
Bod7_023	12.7	114.5
Bod7_025	13.1	120

Figure 8 Variation of Amplitude and frequency with windspeed

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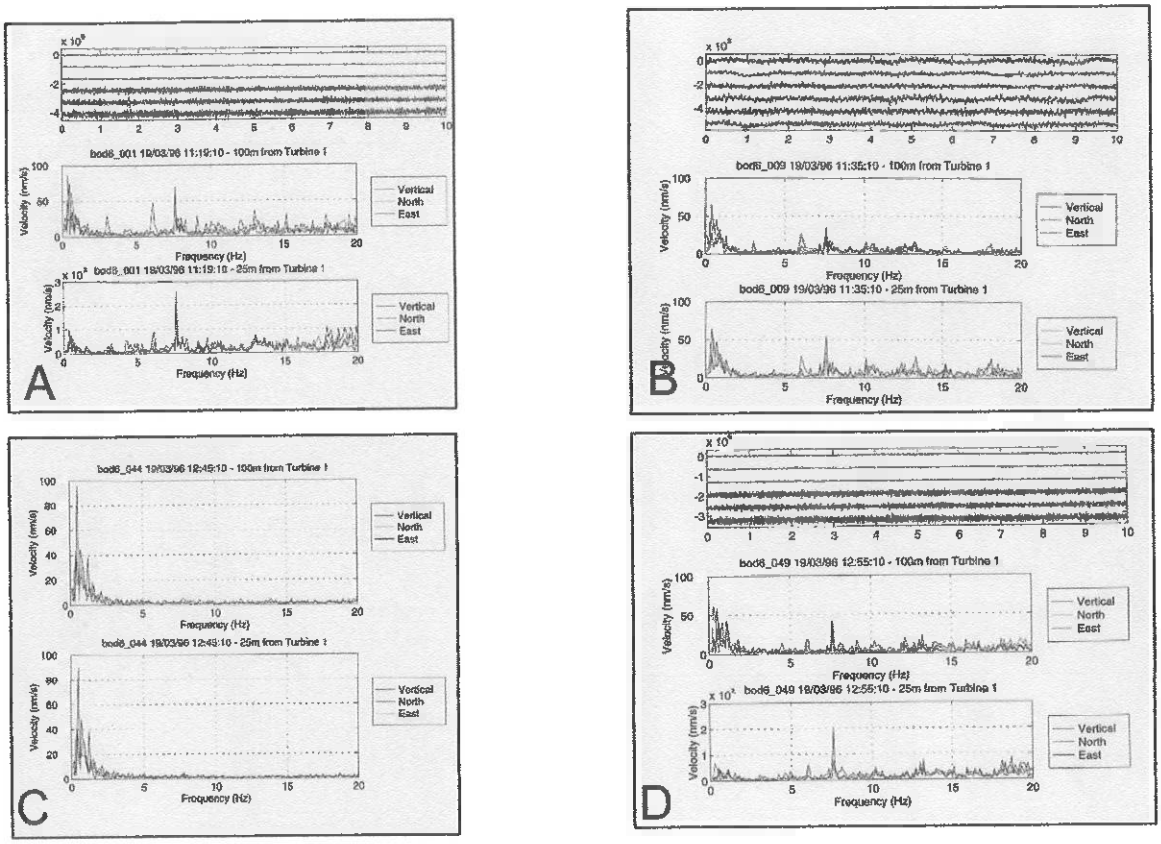

Figure 9 Sequential Shutdown

A) All On, B) T1 Off, C) All Off, D) Only T1 On

Time Interval	Turbines On	Turbines Off	Event Numbers
11:19 to 11:28	All 1 to 11	None	Bod6_001 to Bod6_005
11:29 to 11:48	2 to 11	1	Bod6_007 to Bod6_016
11:49 to 12:08	3 to 11	1,2	Bod6_017 to Bod6_025
12:09 to 12:10	4,5,6,7,8,9,10,11	1,2,3	Bod6_026
12:11 to 12 :12	5,6,7,8,9,10,11	1,2,3,4	Bod6_027
12:12 to 12:23	3,5,6,7,8,9,10,1	1,2,4	Bod6_028 to Bod6_3
12:24 to 12:41	5,6,7,8,9,10,11	1,2,3,4	Bod6_034 to Bod6_041
12:42 to 12:49	None	1,2,3,4,5,6,7,8,9,10,11	Bod6_042 to Bod6_046
12:50 to 12:56	1	2,3,4,5,6,7,8,9,10,11	Bod6_047 to Bod6_050
12:57 to 13:13	None	1,2,3,4,5,6,7,8,9,10,11	Bod6_053 to Bod6_058
13:14 to 13:15	3	1,2,4,5,6,7,8,9,10,11	Bod6_059

Figure 9 Sequential Shutdown

A) All On, B) T1 Off, C) All Off, D) Only T1 On

Time Interval	TurbinesOn	TurbinesOff	EventNumbers
11:19 to 11:29	4,5,7 to 11	None	Event_001 to Event_005
11:29 to 11:48	2 to 11	1	Event_006 to Event_010
11:48 to 12:05	1 to 11	1,2	Event_011 to Event_020
12:09 to 12:10	4,5,6,7,8,9,10,11	1,2,3	Event_021
12:11 to 12:12	5,6,7,8,9,10,11	1,2,3,4	Event_022
12:12 to 12:23	4,5,6,7,8,9,10,11	1,2,3,4	Event_023 to Event_033
12:24 to 12:41	5,6,7,8,9,10,11	1,2,3,4	Event_034 to Event_041
12:41 to 12:49	None	1,2,3,4,5,6,7,8,9,10,11	Event_042 to Event_050
12:50 to 12:54	1	2,3,4,5,6,7,8,9,10,11	Event_051 to Event_054
12:57 to 13:13	None	1,2,3,4,5,6,7,8,9,10,11	Event_055 to Event_071
13:13 to 13:15	1	2,3,4,5,6,7,8,9,10,11	Event_072

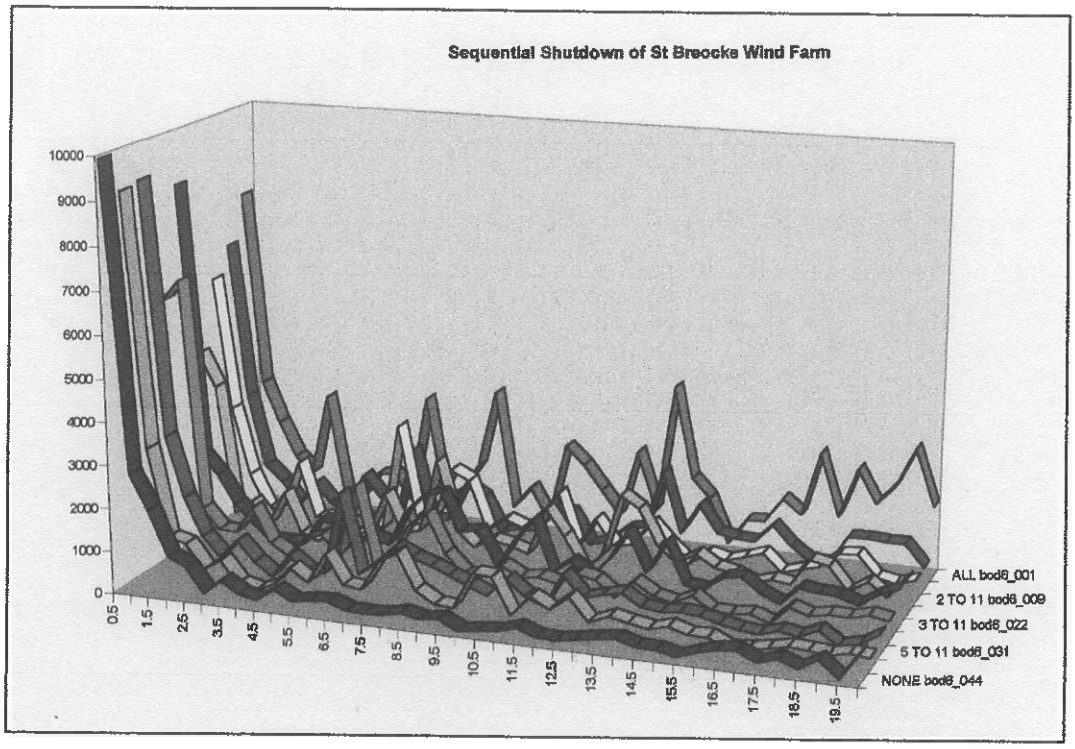

Figure 10 Shutdown Summary

The levels of vibration fell in a manner which was consistent with their origin being from the wind turbine farm. The lowest frequencies persisted even when the whole turbine field was shut-down which indicates that their source may be external to the site or that some complex interference is happening between the multiple vibration sources such as the resonance of the tower structure itself under wind loading.

6 To investigate the variation of amplitude and frequency between individual wind turbines

The presence of large wind components on the shallowly buried instrument masked some of the subtler variation but the levels of vibration (c 50 to 100 nms^{-1}) were consistent between machines although individual frequencies showed considerable variation over the whole St Breocks site.

7 To investigate the frequencies present in the vibrational spectrum of the turbine tower itself for comparison with the microseismic measurements

Figure 11, recorded using accelerometers mounted on the base of Turbine 1, clearly show tonal components which correspond with the frequencies observed out as far as 1 km away from the windfarm. The 4.5 and 7.5 Hz components seen on the microseismic records are particularly pronounced within the infrasonic band (sub 20 Hz) as are other harmonics of 1.5 Hz.

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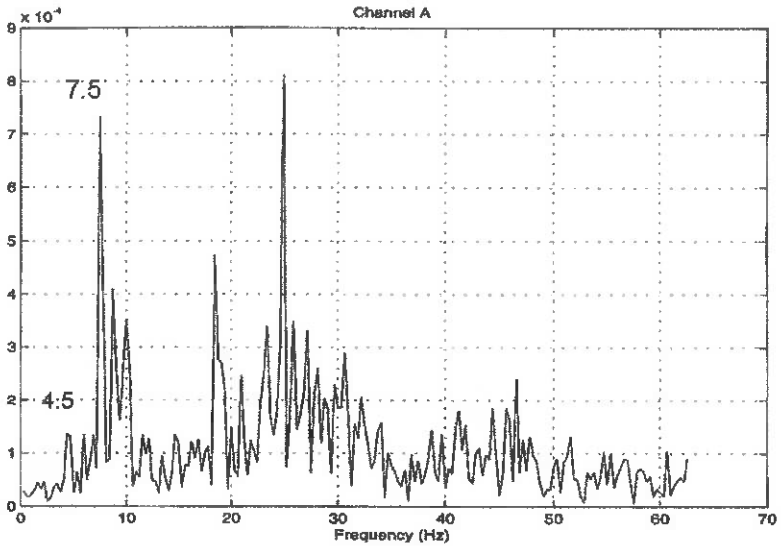

Figure 11 On-tower accelerometer spectrum at Turbine 1 recorded while all other turbines were switched off.

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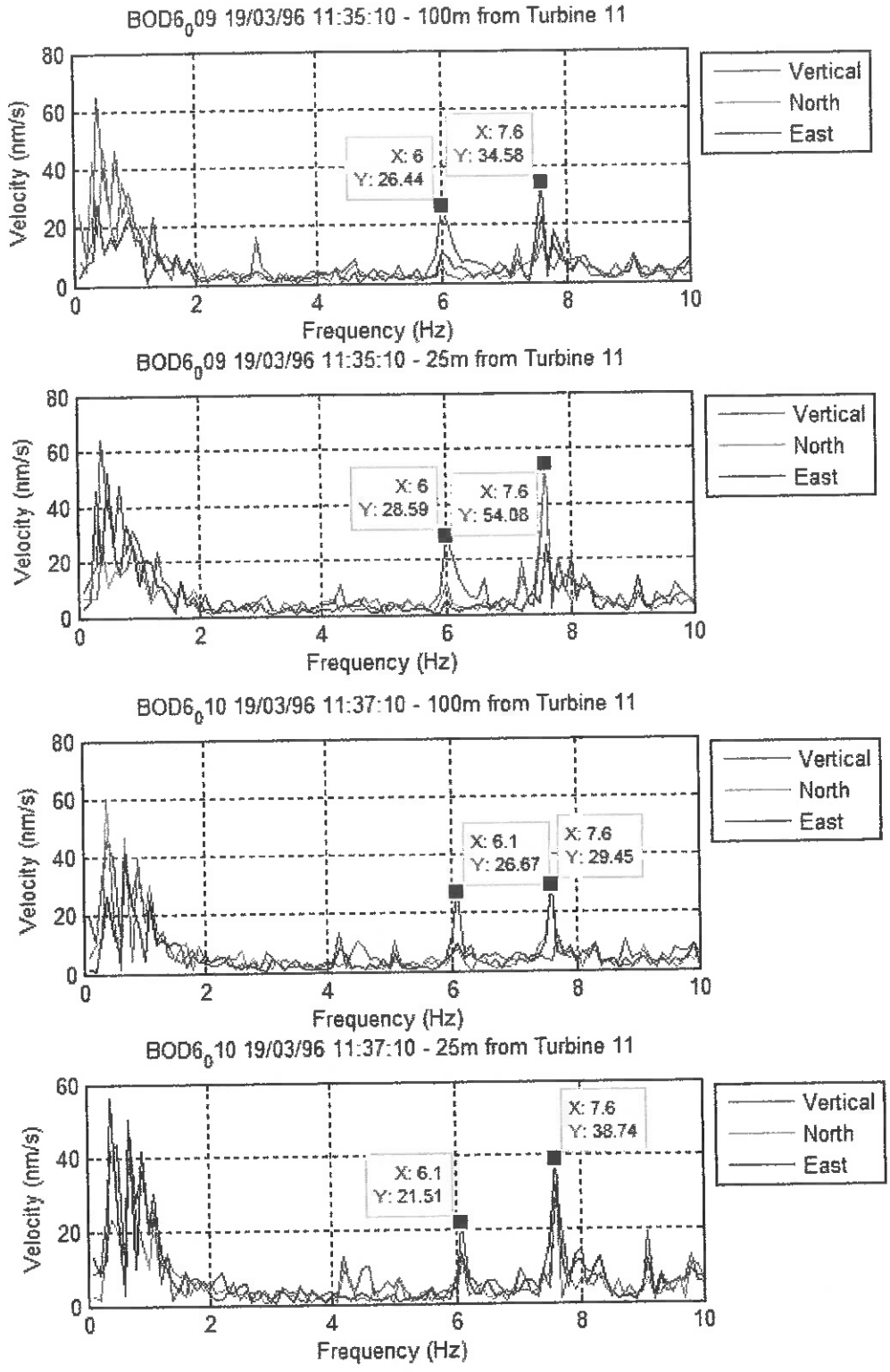

Figure 12 Selected spectra during the sequential shut-down at St Breock Downs

Figure 12 Selected spectra during the sequential shut-down at St Breock Downs

8 To investigate the mode of propagation of the seismic vibrations

The spectra above and the following figure show the variation in amplitude of the best detected 6 and 7.5 Hz harmonics, against distance from the turbine during the switch-off experiment. These and their averages have then been compared with different models for the attenuation of the amplitude with distance. There is considerable variation but the data fit a $r^{-(1/2)}$ model much better than a r^{-1} model.

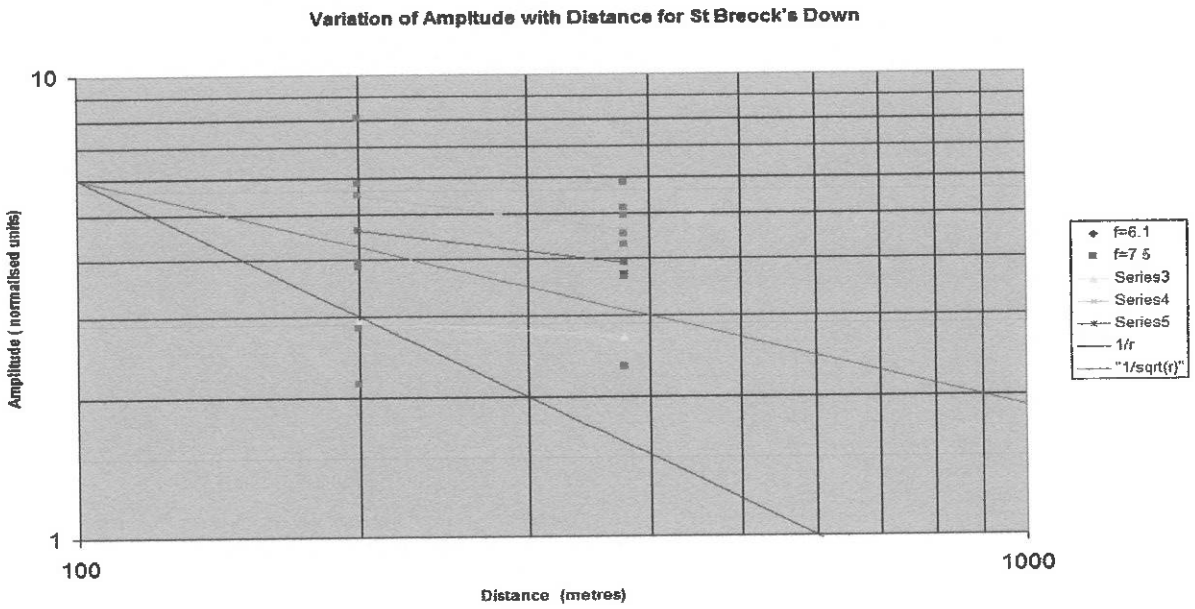

Figure 13 Variation of amplitude of well-detected frequencies with distance and a comparison with various attenuation models.

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Figure 13 Variation of amplitude of well-detected frequencies with distance and a comparison with various attenuation models.

Extremely Low wind speed, no production:

Date:	01.10.2004
Time:	04:00 to 05:00
Average wind speed:	3.46ms^{-1}
Average wind direction:	206.67°
Average production:	-4.5 kW

It is clear that when wind speeds are close to zero and there is no production then no infrasound signals can be seen on any of the detectors as would be predicted.

Low wind speed, low production:

Date:	01.10.2004
Time:	06:00 to 07:00
Average wind speed:	4.58ms^{-1}
Average wind direction:	221.33°
Average production:	1826.8 kW

When the windfarm starts to generate at low wind speeds, considerable infrasound signals can be detected at all stations out to c 10 km. Clear harmonic components which are the second multiple and up of 1.4 Hz (the blade-passing frequency) can be seen although interestingly and somewhat enigmatically the blade-passing frequency itself is not so strongly detected

Moderate wind speed, moderate production:

Date:	02.10.2004
Time:	00:00 to 01:00
Average wind speed:	7.29ms^{-1}
Average wind direction:	245.67°
Average production:	9100.9 kW

When the windspeed and production rise clear signals can be seen on Kelphope 1 at c 2 km but the signals are not so well detected at the more distant array.

High wind speed, full production:

Date:	02.10.2004
Time:	11:00 to 12:00
Average wind speed:	11.189ms^{-1}
Average wind direction:	254.67°
Average production:	16920.8 kW

Extremely low wind speed, no production:

Date:	01.10.2004
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High wind speed, full production:

Date:	02.10.2004
Time:	11:00 to 12:00
Average wind speed:	11.18ms^{-1}
Average wind direction:	254.67°
Average production:	16920.8 kW

When the windspeed and production rise then while it is possible to see the harmonics at Kelphope they are not detectable at all on the more distant array at 10 km.

This is a very significant observation and indicates that infrasound signals from windfarms only appear to propagate efficiently to the more distant parts of the array during relatively calm conditions when turbulence associated with high wind velocities is not present.

This is in marked contrast to the microseismic signals observed during exactly the same period which grow in amplitude and power as the wind speed and energy production increase. While it is apparent that infrasound signals can clearly be detected at considerable distances away from a windfarm in the right conditions and may have an importance in this regards, they CANNOT be the primary source for the ground vibrations we measure on buried seismometers as there is an inverse relationship with windspeed and weather conditions for the two phenomena and they cannot therefore be causally related.

This confirms what was suggested earlier, that the vibrations experienced on seismometers situated at considerable distances from farms propagate through the ground as high frequency Rayleigh waves and not through the air, and as such must obey the propagation modes and attenuation and absorption laws for geological materials and not air.

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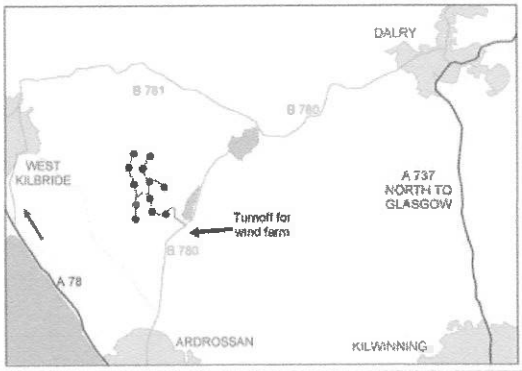
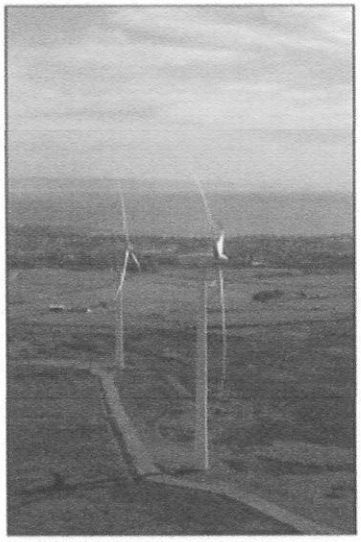
ON-Tower monitoring of a variable speed wind farm

A variable speed site was made available at Ardrossan, a 12 turbine 24 MW windfarm operated by Airtricity in order for us to carry out on-tower monitoring there and we are grateful for their very helpful cooperation.

12 Vestas V80
24 MW
Airtricity
Latitude 55 41 09
Longitude 04 48 26





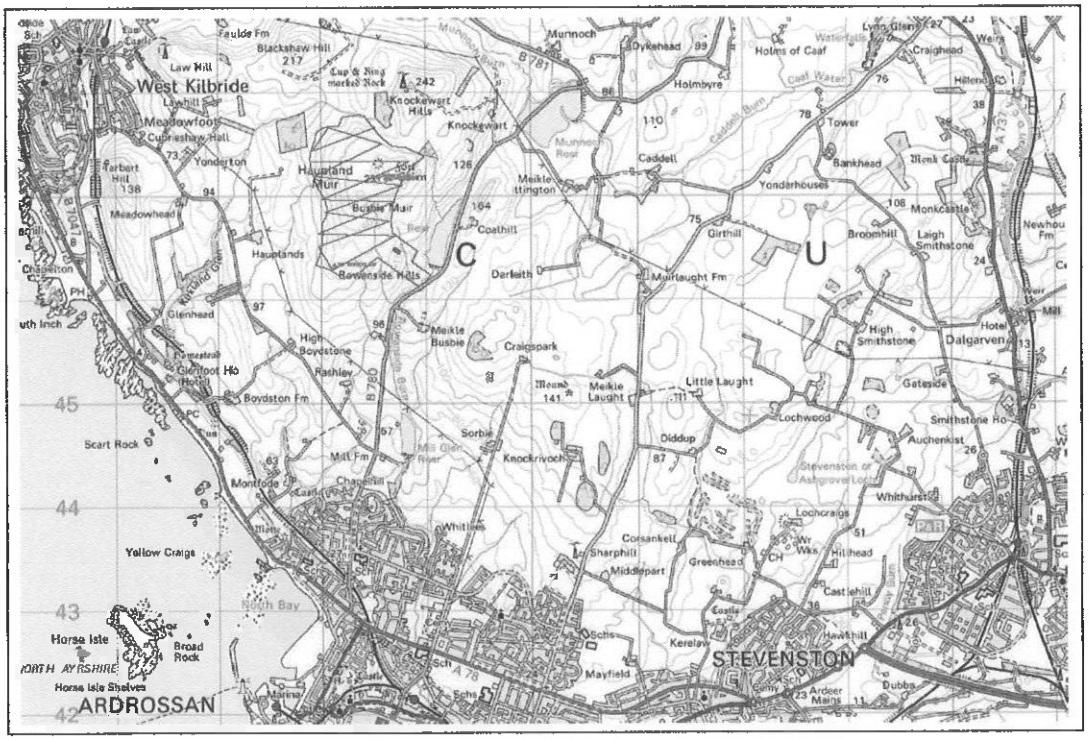


Figure 56 Location of Ardrosssan variable speed windfarm

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Figure 56 Location of Ardrossan variable speed windfarm

The Güralp CMG-DM24S12AMS acquisition and monitoring system with 6 CMG-5U accelerometers was deployed on wind turbine 1 on 2/11/2004 and on Turbine 7 on 9/12/2004 , in each case a 1 CMG-5TD digital output strong motion accelerometer buried at a distance between from each turbine. Locations of the site and the turbines are shown in figures 56 and 57. Details of the deployment and sequence of shutdown of these experiments are given in Appendix C.

Accelerometers were attached to the tower along North South East and West azimuths and also mounted vertically as described in Appendix 3. A rapid shut down and sequential switch on was carried out and the spectrograms for both phases are shown in Figures 58 and 59.

As these are variable speed turbines we should not expect to obtain quite such distinct harmonics as we might measure at a fixed speed windfarm as has already been shown from Crystal Rig. However, it is very clear that we do have remarkably persistent spectral peaks which do not appear to change much during the 90 minutes of this experiment. They form bands which are very pronounced between 3 to 5 Hz and between 6 to 9 Hz but there are distinct spectral peaks even within these bands. They disappear as soon as the farm is switched off, re-appear for the short time that turbine 7 and then 6 are on individually and then reappear gradually as the sequential switch-on occurs as described in the tables beneath the spectrograms.

Measurements close to the turbines allow us to clearly see the fall and subsequent rise in power but because there is a considerable disparity in distance to the individual turbines does not allow us to assess quantitatively how the signal sums as extra turbines are included.

In order to address this we have selected the 4.5 Hz band on the Kelphope1 station (2.4 km) during the Dun Law switch-off experiment and have calculated the power change during the switch off and on. The signals from this station were filtered to remove all other components and the rms power was calculated through the duration of the switch off. These are shown in Figure 60 (lower figure).

It is clear that as the number of turbines increases the power increases but it does not scale linearly with power (i.e. the final signal is not 26 times as large as the l with a single turbine.

Schofield (2001) suggested that the power should scale as /N and this seems to be the case as in fact it is approximately 4 to 5 times as much, which is close to what we would anticipate for 26 turbine (/26=5.1).

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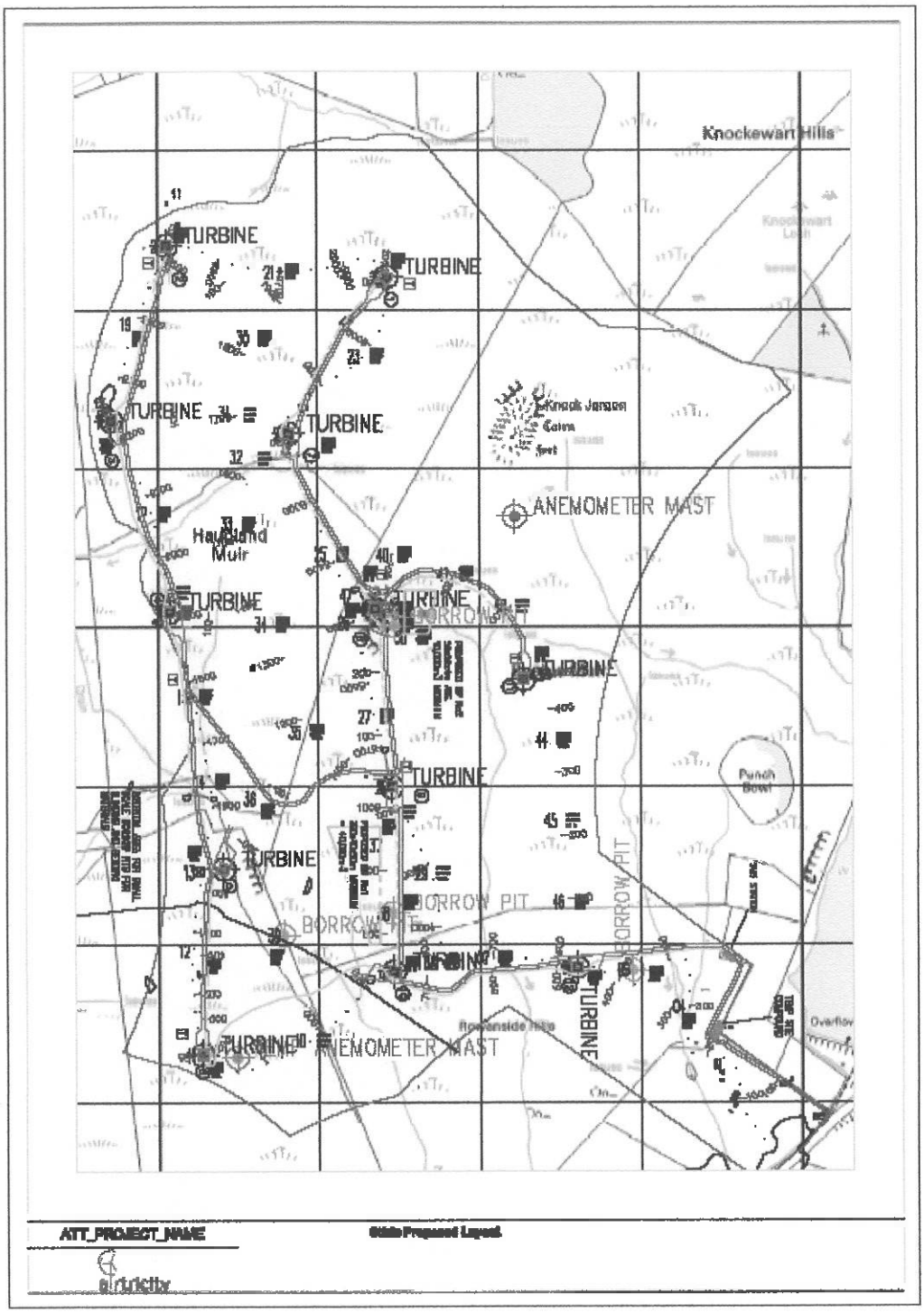
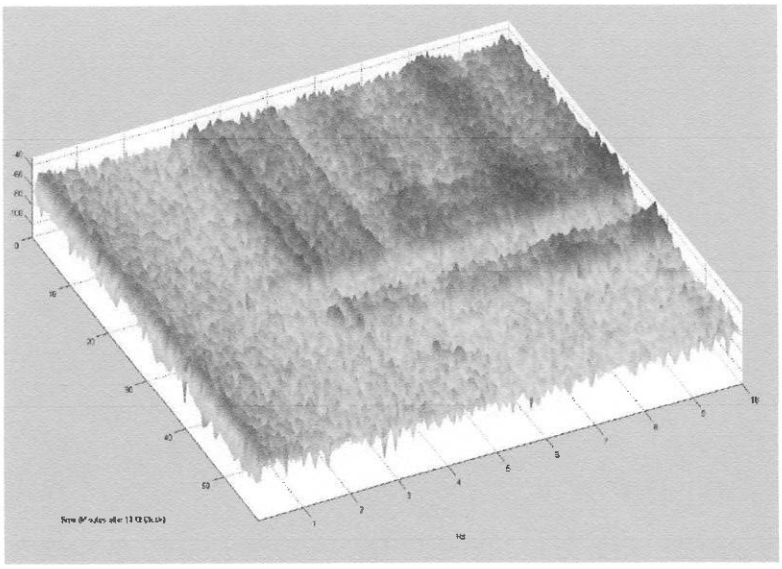


Figure 57 Map of the Turbine Locations at Ardrossan

Figure 57 Map of the Turbine Locations at Androssan



11.25	All
11.30	All Off
11.35	7
11.40	All Off
11.45	6
11.50	6,10
11.55	6,10,12

12.00	6,10,12,5
12.05	6,10,12,5,9
12.10	6,10,12,5,9,11
12.15	6,10,12,5,9,11,8
12.20	6,10,12,5,9,11,8,4
12.25	6,10,12,5,9,11,8,4,3
12.30	6,10,12,5,9,11,8,4,3,2
12.35	6,10,12,5,9,11,8,4,3,2,7

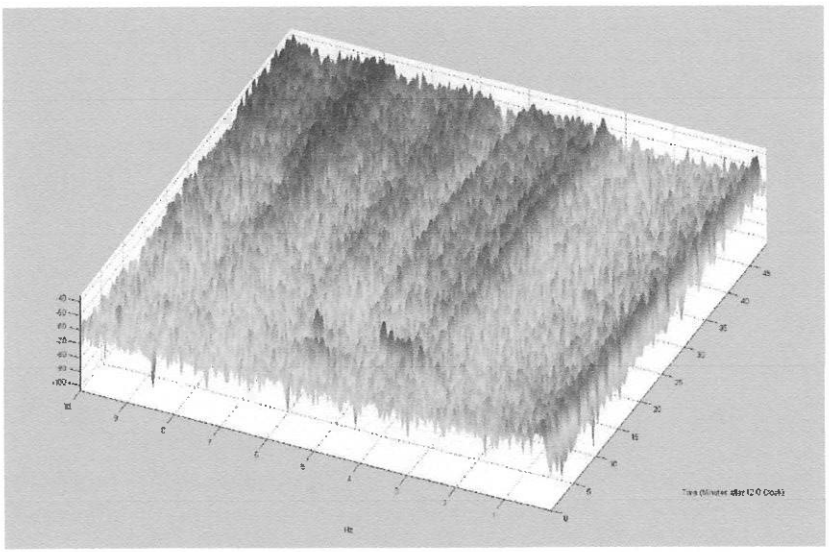


Figure 58 Spectrograms of the switch of and switch on at Ardrossan on 9/12/2004

11.25	All
11.30	All Off
11.35	7
11.40	All Off
11.45	6
11.50	6,10
11.55	6,10,12

12.00	6,10,12,5
12.05	6,10,12,5,9
12.10	6,10,12,5,9,11
12.15	6,10,12,5,9,11,8
12.20	6,10,12,5,9,11,8,4
12.25	6,10,12,5,9,11,8,4,3
12.30	6,10,12,5,9,11,8,4,3,2
12.35	6,10,12,5,9,11,8,4,3,2,7

Figure 58 Spectrograms of the switch of and switch on at Ardrossan on 9/12/2004

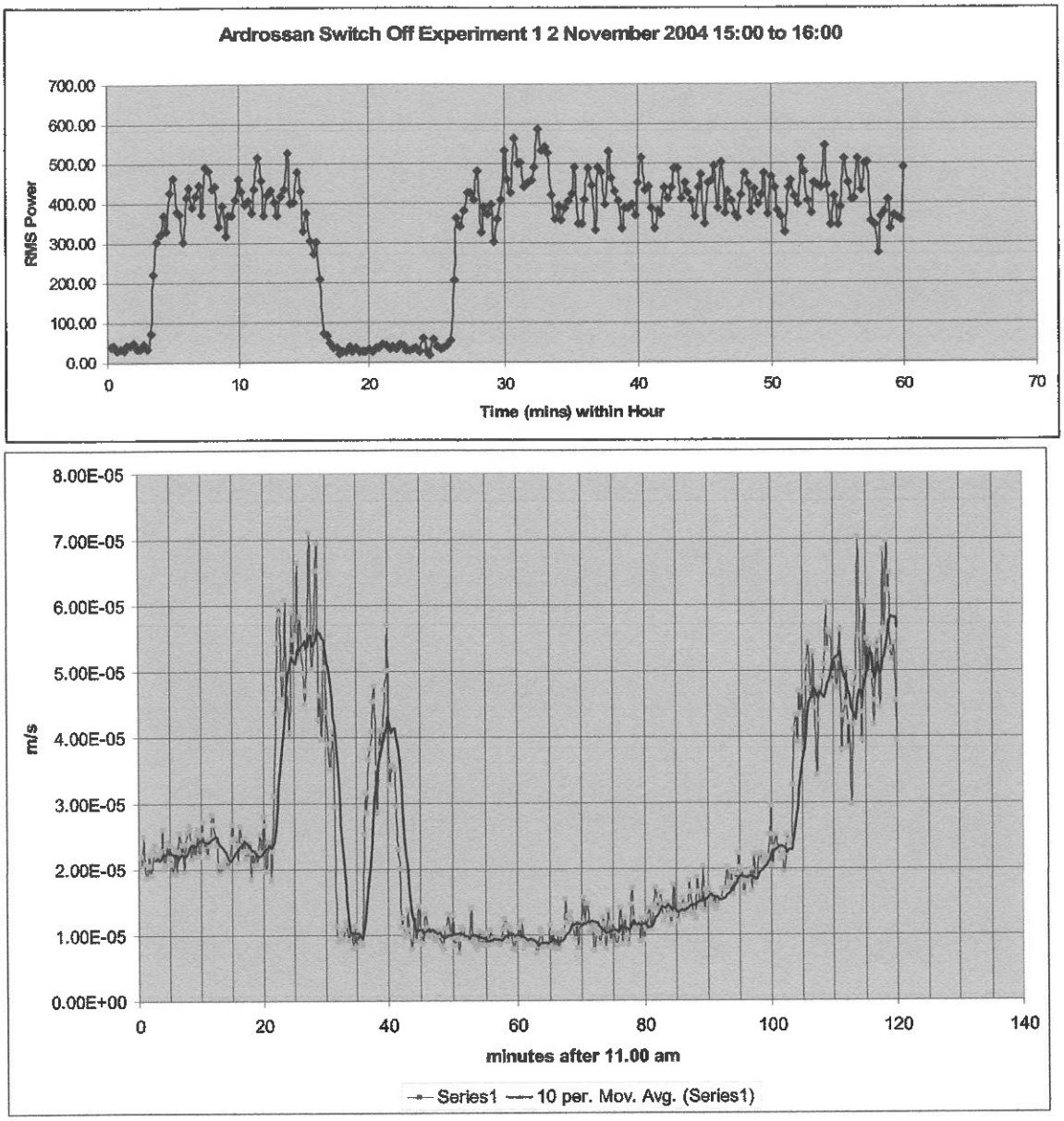
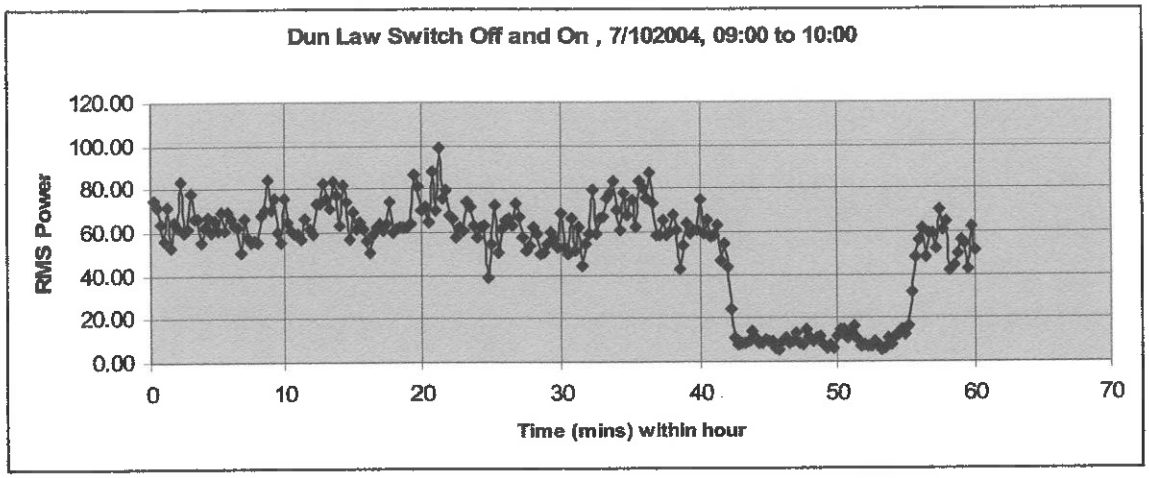
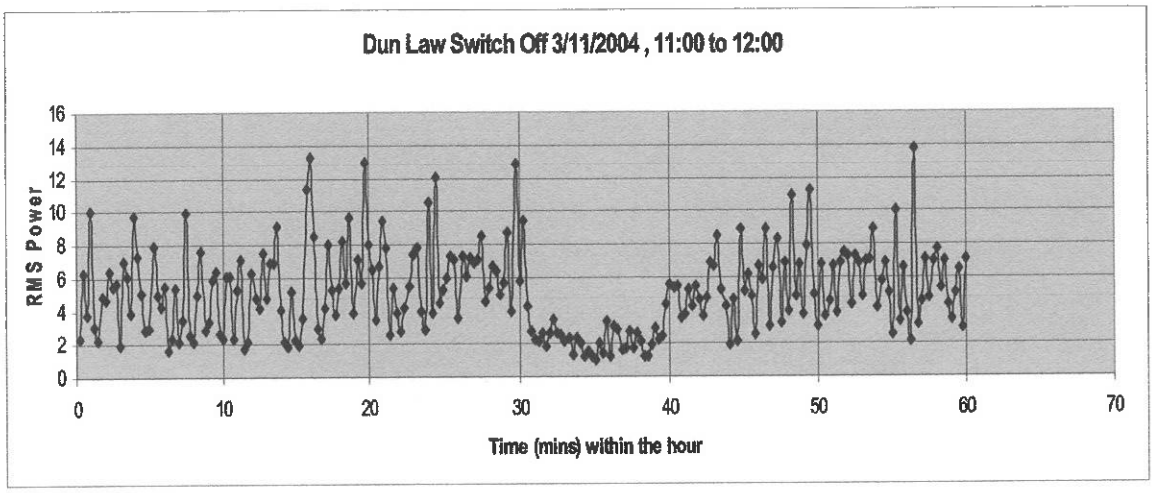


Figure 59 Ardrossan Switch Off and On, 2 /11/2004 15:00 to 16:00 (top) and 9/12/2004, 11:00 to 13:00 (bottom)

Figure 59 Ardrossan Switch Off and On, 12/11/2004 15:00 to 16:00 (top) and 9/12/2004, 11:00 to 13:00 (bottom)





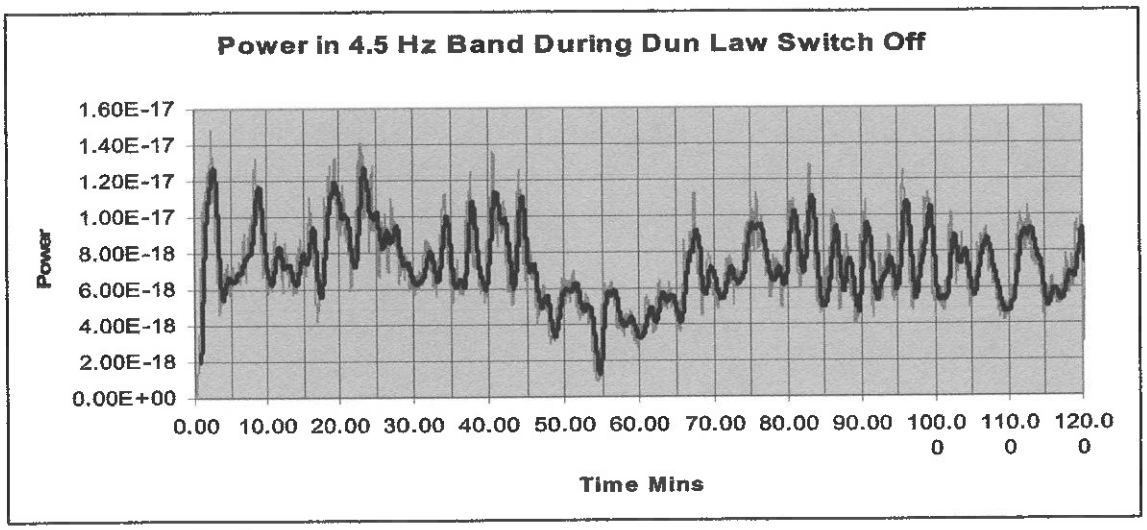


Fig 60 **Switch Off at Dun Law on 7/8/2003 Top and Bottom and 3/11/2004 (middle)**

Fig 60 Switch Off at Dun Law on 7/8/2003 Top and Bottom and 3/11/2004 (middle)

We now have sufficient information from the monitoring and analysis of microseismic, infrasound and on-tower monitoring to develop a solution to the problem of what level of vibration is permissible at Eskdalemuir, how does wind farm vibration propagate and attenuate and what is the permissible number and distribution of wind farms and turbines in the Southern Uplands. We first propose a mathematical model for the system following Bowers (2004) and then address the points of interest as a series of important questions with the answers derived from this study.

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Mathematical Model of Wind Farm Noise Propagation

In order to evaluate the nature and properties of noise propagation from windfarms we postulate the following mathematical model

The seismic displacement amplitude spectrum, U(ω, r) at angular frequency ω, of a single wind turbine operating at distance r, from the recording station is given by the following convolutional mathematical model:

$$U(\omega,r) = S(\omega)G(r)B(\omega,r)P(r)$$

where,

S(ω) represents the source spectrum,
P(r) is a frequency-dependent receiver-site effect,
G(r) represents geometrical spreading, $G(r) = r^{\eta}$
***B*(ω, r)** is the attenuation
v=seismic velocity

$$B(\omega,r) = \left(\exp\left(\frac{-\omega r}{2Q(\omega)v} \right) \right)$$

For Cylindrical Spreading (seismic surface waves)

$$\eta = -0.5$$

Therefore the amplitude of the signal from a single turbine at a distant location, A_{far}, is related to the amplitude at a location closer to the turbine, A_{near}, by the following equation (the 1/sqrt(r) with linear attenuation model), where:

$$A_{far} = A_{near} \sqrt{R_{near} / R_{far}}\, e^{\frac{\pi f (R_{near} - R_{far})}{Qv}}$$

R_{near} and R_{far} are the distances from the source to the near and far locations, respectively,

Q is a factor giving the non-geometrical attenuation of the wave with distance travelled i.e. absorption of energy within the rock as the seismic wave does work to vibrate the particles of the material.

f is the frequency of the signal ($\omega = 2\pi f$)

This formula is applicable to surface waves radiating out from the source uniformly. Localised inhomogeneties may cause some focussing of the energy but this is not predictable in a generalised model and is unlikely to significantly affect the conclusions.

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In order to evaluate the nature and properties of noise propagation from windfarms we postulate the following mathematical model

The seismic displacement amplitude spectrum, $U(\omega, r)$ at angular frequency ω, of a single wind turbine operating at distance r, from the recording station is given by the following convolutional mathematical model:

$$U(\omega,r) = S(\omega)G(r)B(\omega,r)P(r)$$

where,

$S(\omega)$ represents the source spectrum,
$P(r)$ is a frequency-dependent receiver-site effect,
$G(r)$ represents geometrical spreading, $G(r) = r^{n}$
$B(\omega, r)$ is the attenuation
v=seismic velocity

$$B(\omega,r) = \left(\exp\left(\frac{-\omega r}{2Q(\omega)v}\right)\right)$$

For Cylindrical Spreading (seismic surface waves)

$$n = -0.5$$

Therefore the amplitude of the signal from a single turbine at a distant location, A_{far}, is related to the amplitude at a location closer to the turbine, A_{near}, by the following equation (the 1/sqrt(r) with linear attenuation model), where:

$$A_{far} = A_{near}\sqrt{\frac{R_{near}}{R_{far}}}\, e^{-\frac{\pi f (R_{far}-R_{near})}{Qv}}$$

R_{near} and R_{far} are the distances from the source to the near and far locations, respectively,

Q is a factor giving the non-geometrical attenuation of the wave with distance travelled i.e. absorption of energy within the rock as the seismic wave does work to vibrate the particles of the material.

f is the frequency of the signal ($\omega=2\pi f$)

This formula is applicable to surface waves radiating out from the source uniformly. Localised inhomogeneities may cause some focussing of the energy but this is not predictable in a generalised model and is unlikely to significantly affect the conclusions.

Question 1: **Do Fixed and Variable speed wind turbines generate detectable vibrations**

Answer: **Yes**

- We have clearly shown that both fixed speed and variable speed wind turbines generate low frequency vibrations which are multiples of blade passing frequencies and which can be detected on seismometers buried in the ground at significant distances away from wind farms even in the presence of significant levels of background seismic noise (many kilometres).

- Some of these are non-stationary at very low wind speeds where we clearly see variation in frequency over long and short timescales and we postulate that these are generated by the interaction between the blades and the towers. There are other frequencies which are stationary and we postulate that these are caused by normal modes of vibration of the towers

- We have clearly shown that wind turbines generate low frequency sound (infrasound) and acoustic signals which can be detected at considerable distances (many kilometres) from wind farms on infrasound detectors and on low-frequency microphones (Hayes pers. comm.)

Question 2: **How does energy propagate from the Wind Turbine to a receiving SEISMIC Station?**

- as Infrasound travelling through the air for the near zone where

$$G=r^{-1}?$$

or

- as Seismic Surface Waves travelling through the ground (cylindrical spreading), where

$$G=r^{-1/2}?$$

Note: At greater distances where the atmosphere acts as a waveguide infrasound may also have a cylindrical dependency on r

Answer

- It travels to the seismometer as seismic surface waves, because, we can examine co-located seismic records and infrasound records at the same times and show that it is clear that infrasound energy propagation is optimal in quiet wind conditions where stable atmospheric conditions prevail and that the amplitude DECREASES as the wind speed (and turbulence) increase.

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- Conversely, Seismic Amplitude INCREASES with wind speed as the energy of the turbines increases

- Clearly there CANNOT be a casual relationship between the seismic amplitude and the infrasound if they have different behaviours with wind speed.

- N.B. However, it is also clear that low-frequency sound waves can be detected at considerable distances away from a wind farm under the right atmospheric conditions.

Question 3: **If we have a wind farm of N turbines, how does the seismic amplitude increase as compared to 1 turbine?**

Answer

- We have shown it varies as the square root of N and this is to be expected because the turbines are not all in phase and neither are they operating at exactly the same frequency because of the slight possible variations in rotation speed and also wind conditions across the farm. There is also a possible 10% variation in speed (Optislip) which will cause broadening of the spectral peaks. They are quasi-random sources and therefore add as $\sqrt{N}$

- Therefore 100 turbines are 10 times as noisy as 1, not 100 times

Question 4: If we have N wind farms, how does the seismic amplitude increase as compared to 1 windfarm?

Answer:

- For similar reasoning as given previously for individual wind turbines, individual wind farms will not be in phase with each other and so they will add in QUADRATURE

- $vtot=\sqrt{(v1^2+v2^2+ v3^2...+ vn^2)}$

Question 5: **How will wind speed and direction affect the vibrations?**

Answer: The following graph (Figure 2) shows the variation of seismic power with windspeed and direction. Although there is some variation with wind direction there is a clear increase with windspeed within the operational region (up to c 15m/s)

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Answer: The following graph (Figure 2) shows the variation of seismic power with windspeed and direction. Although there is some variation with wind direction there is a clear increase with windspeed within the operational region (up to c 15m/s)

Appendix 6

Appendix 6

Derrybrien
Loughrea
Co Galway

29/7/2003

Mr Noel Burke
Enforcement Officer
Planning Section
Galway Co Council
Prospect Hill
Galway

Dear Mr Burke

I have made a number of unsuccessful attempts to contact you since our conversation by phone on 24/7/2003.

As you are aware from my initial contact with you on 16/7/2003 I am requesting information from the planning section of Galway Co Council as to whether or not development work adjacent to windfarm sites at Derrybrien North, Toormacnevin and Bohaboy are authorised or unauthorised.

The planning reference numbers for the developments referred to are 97/3470, 97/3652 and 00/4581.

It is my understanding that Galway County Council and An Board Pleanala decided to "grant permission for the said development in accordance with the said plans and particulars, subject to the conditions specified in the second schedule".

I would be grateful to you if you could clarify and make the following information available to me as soon as possible.

Is the entry exit roadway currently under construction approximately 2 km north of the original access roadway authorised or unauthorised?

Is the quarry, which is in operation authorised or unauthorised?

Is the site compound authorised or unauthorised?

What is the status of the 5-year grant of permission given on 12/10/1998 as the construction is likely to take approximately 18 months to complete?

What steps have been taken to monitor water quality before and since construction started?

Has the developers requested changes to roadways, control house or turbine locations since the grant of permission?

Has the survey of the Hen Harrier population been properly undertaken?

Who will monitor the hundreds of thousands of tonnes of excavated peat and rock, which will be disturbed during construction?

Is there a suitably qualified archaeologist at all times on the site?

Has the roads and bridges in this area been assessed and upgraded where necessary in light of the fact that construction has started?

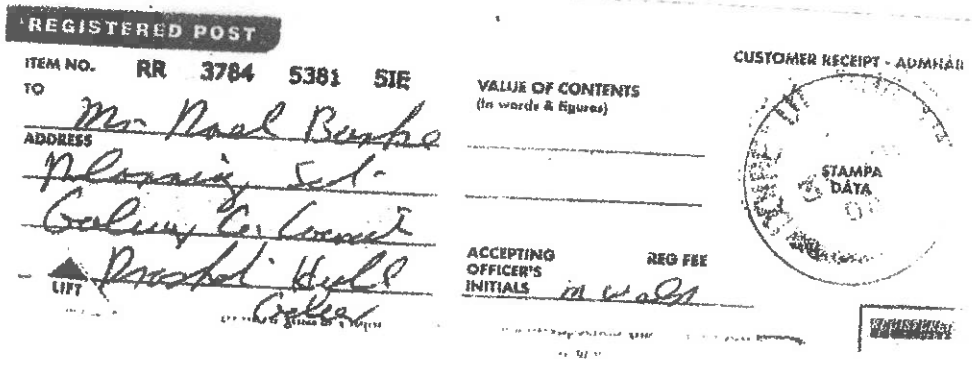
All of the above questions are in the interest of proper planning and development of the community in which I live.

The integrity of both the planning and democratic processes are at stake here so therefore it is of critical importance that openness, transparency and accountability principals are rigidly adhered to.

I may be contacted at the above address or by phone at 091 632291 or E- mail: mjgcollins@eircom.net

Yours sincerely,

Martin Collins



Appendix 7

Appendix 7

REPORT OF MANAGEMENT COMMITTEE MEETING HELD ON TUESDAY 11 MARCH, 2003

In attendance: Secretary General Brendan Tuohy, Martin Brennan, Cecil Beamish, Eamonn Molloy, Maurice Mullen, Peter O'Neill, Katherine Licken, Richard Moore, Tom McLoughlin & Catherine McDonald.

Apologies: Minister Dermot Ahern, Minister of State John Browne, Deputy SG Sara White & Ciaran O'Cuinn.

---

1. **Minutes of last MC Meeting**
   Report of meeting of 18/02/03 approved.

2. **Government Meeting Decisions / Update**
   Nothing of direct relevance to DCMNR on the agenda for today's meeting
   Not releasable under Section 19 (meetings of the Government) of the Freedom of Information Act, 1997.

3. **Legislation Priorities for Department**
   Progress on the Digital Hub Agency Bill & the Law of the Sea (Repression of Piracy) Bill in the Seanad noted

4. **Statement of Strategy/Annual Report/Outcome of Offsite Strategic Priorities Meeting**
   Katherine Licken will circulate a note on the Outcome of the recent Offsite Strategic Priorities meeting

5. **Early Warning Report (informal)**
   Nil.

6. **Expenditure Management 2003 (Profiles, Programmes, Admin Budget)**
   The Secretary General requested that the monthly Expenditure profiles be displayed on the Department's intranet.

7. **EU Agenda Overview and Presidency preparation**
   Maurice Mullen met Niall Curran last week and had a useful discussion on Niall's new responsibilities on the Maritime Safety agenda.
   Maurice said that it is likely that the fallout from the sinking of the tanker *Prestige,* and the ensuing environmental damage to Spanish & Portuguese coasts, will dominate the Maritime Safety agenda during the Irish Presidency.

   The Secretary General asked re the advertising of the support posts in the Perm Rep for the duration of the Presidency. Martin Brennan suggested that 2 posts should be created to support the Energy & Maritime Safety agenda, but it was agreed to discuss this at a later date.

REPORT OF MANAGEMENT COMMITTEE MEETING HELD ON TUESDAY 11 MARCH, 2003

In attendance: Secretary General Brendan Tuohy, Martin Brennan, Cecil Beamish, Eamonn Molloy, Maurice Mullen, Peter O'Neill, Katherine Licken, Richard Moore, Tom McLoughlin & Catherine McDonald.

Apologies: Minister Dermot Ahern, Minister of State John Browne, Deputy SC Sara White & Ciaran O Cuinn.

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Nil.

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7. **EU Agenda Overview and Presidency preparation**
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Maurice said that it is likely that the fallout from the sinking of the tanker Prestige and the ensuing environmental damage to Spanish & Portuguese coasts will dominate the Maritime Safety agenda during the Irish Presidency.

The Secretary General asked to the advertising of the support posts in the Press Reg for the duration of the Presidency. Martin Brennan suggested that 2 posts should be created to support the Energy & Maritime Safety agenda, but it was agreed to discuss this at a later date.

It was agreed that a note would be prepared for the Minister outlining the meetings likely to be arranged, prior to & during the forthcominig Presidency and the likely major issues for this Department.

8. **Update from each Assistant Secretary**

Peter O'Neill briefed the meeting on: NDP & Ports; the series of staff meetings he was holding on the Inland Fisheries agenda; Forestry issues; marine leisure sub-measures; the Seven Heads and Kinsale gas fields.
The Secretary General is to meet shortly with Jim O'Brien of the Dept. of Finance to discuss funding for Forestry.

Maurice Mullen briefed the meeting on:
The *Princess Eva* tanker, which left Irish shores at the weekend. The transhipment of the oil cargo was successful & negotiations are now being held re the costs of operation.
Nominees for the Adventure Centre Authority were due by end February, & there was a brief discussion on the safety responsibilities of the new Authority.
The following also received mention: Belmullet Anglers; Loran-C proposal; Transport Council on the 27th.
Investigation in to Doolin Ferries is still ongoing despite some delays
A meeting is to be arranged with Minister Ahern, Minister for the Environment, & Minister for Transport re the continued operation of Search & Rescue Services from Waterford airport.
Not releasable under the Freedom of Information Act, 1997

Cecil Beamish met today with Minister of State for the Environment, Pat the Cope Gallagher re licensing issues in Donegal.
Bilateral scheduled for tomorrow with Commissioner Fishler on the Irish Box issue (not on the agenda for Fisheries Council on 17th & 18th).
The following also received mention: Litigation on CZMD issues; Consultative process on Quota Management; & ISPAT site issue.

Martin Brennan spoke on the following issues:
Saorgas correspondence re Derrybrien Windfarm project & forestry obligations. ESB's involvement & the issue of the disposal of land / State assets by Coillte were raised.
Martin's staff are working on major Energy Policy paper for Cabinet Subcommittee.
Martin is meeting ESB tomorrow re Moneypoint & Kyoto.
IEA in-depth review of Ireland; Parent Company guarantees in relation to Coolkeragh; ESB Generating Station at Rhode Ballot; Bord na Mona & proposal re fertiliser project; SeTrans project; & Tunes Plateau all received mention.

Eamonn Molloy spoke on the following:
Proposal on TV Licence fee with Minister.
An Post decision re Letterbox deliveries expected shortly

Minister to appear before Joint Oireachtas Committee this evening on ICT.
Progress on Sports Bill in Seanad noted. Time slots in Dail will be needed to clear this Bill before Easter recess
DMDL Bill is progressing slowly.
Draft General Scheme of Public Service fund to be completed this week.
Digital Archive Scheme & RTE revamped Statement of Commitments also received mention.

9. **FOI Update**
It was agreed that the format of FOI report to MC was much improved.

Eamonn Molloy suggested putting a register of all FOI requests and replies on the Department's Internet. There was some discussion on the merits of this suggestion and Eamonn undertook to discuss the issue with the FOI Policy Unit in Dept. of Finance.

10. **Forthcoming Events / Media Issues**
Minister is to do an interview with Jamie Smith of the Irish Times this evening, concentrating mostly on Broadband & Broadcasting issues.

11. **Any Other Business**
The Secretary General asked that all Annual Reports for 2002 for the Department's SSB's be submitted, and the checklist complied with.
Electronic Advertising and the placing of adverts in the National press received mention. Tom McLoughlin undertook to circulate a note on standard requirements for such adverts.

12. **Date of Next Meeting**
18 March at 3.00pm in Leeson Lane.

REPORT OF MANAGEMENT COMMITTEE MEETING
HELD ON TUESDAY 18 MARCH, 2003

In attendance: Secretary General Brendan Tuohy, Deputy SG Sara White, Martin Brennan, Cecil Beamish, Eamonn Molloy, Maurice Mullen, Peter O'Neill, Katherine Licken, Richard Moore, Tom McLoughlin & Catherine McDonald.

Apologies: Minister Dermot Ahern, Minister of State John Browne, & Ciaran O'Cuinn.

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1. **Minutes of last MC Meeting**
Report of meeting of 11/03/03 approved.

2. **Government Meeting Decisions / Update**
Not releasable under Section 19 (meetings of the Government) of the Freedom of Information Act, 1997.

3. **Legislation Priorities for Department**
Gas Regulation Bill received mention

4. **Statement of Strategy/Annual Report**
Sara White asked each Assistant Secretary to review the material for inclusion in the Annual Report in each of their areas by the end of the week.

5. **Early Warning Report (formal)**
Nothing formal to report.
It was agreed that a note would be prepared for Minister Ahern for Cabinet tomorrow on emergency procedures, including oil stocks, given the Iraqi war situation. GPS also received mention.

6. **Expenditure Management 2003**
Sara White briefed the group on her recent meeting with Jim O'Brien of the Department of Finance re User Charges.

7. **EU Agenda Overview and Presidency preparation**
An EU Strategy Group is to be established to manage Presidency planning process and the delivery of Presidency priorities. This group will report back to the Management Committee monthly, and more frequently if necessary. Assistant Secretaries were asked to flag resource issues and priorities in their areas.
Twice weekly video conference meetings to be arranged with staff in the Perm Rep as Presidency approaches.
Bilateral meetings with EU member states to be arranged for November & December.
Draft EU Presidency Action Plan to be put on Intranet.
Advertisment for support posts in the Perm Rep to issue this week.

REPORT OF MANAGEMENT COMMITTEE MEETING HELD ON TUESDAY 18 MARCH, 2003

In attendance: Secretary General Brendan Tuohy, Deputy SG Sara White, Martin Brennan, Cecil Beamish, Eamonn Molloy, Maurice Mullen, Peter O'Neill, Katherine Licken, Richard Moore, Tom McLoughlin & Catherine McDonald.

Apologies: Minister Dermot Ahern, Minister of State John Browne, & Ciaran O'Quinn.

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Report of meeting of 11/03/03 approved

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Gas Regulation Bill received mention

4. **Statement of Strategy/Annual Report**
Sara White asked each Assistant Secretary to review the material for inclusion in the Annual Report in each of their areas by the end of the week.

5. **Early Warning Report (formal)**
Tabling formal to report
It was agreed that a note would be prepared for Minister Ahern for Cabinet tomorrow on emergency procedures, including oil stocks, given the Iraqi war situation. GPS also received mention.

6. **Expenditure Management 2003**
Sara White briefed the group on her recent meeting with Jim O'Brien of the Department of Finance re User Charges

7. **EU Agenda Overview and Presidency preparation**
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Twice weekly video conference meetings to be arranged with staff in the Farm Rep as Presidency approaches.
Bilateral meetings with EU member states to be arranged for November & December.
Draft EU Presidency Action Plan to be put on Intranet.
Advertisement for support post in the Farm Rep to issue this week.

It was noted that EU Parliament Elections scheduled for June of next year could impact on the work programme for the Irish Presidency.

8. **Update from each Assistant Secretary**

Cecil Beamish gave an update on the main issues in his area of responsibility, including BIM's budget, the Shellfish Waters Directive, & numerous legal cases, including a case against Ireland under the Dangerous Substances Directives.

Maurice Mullen informed the meeting that Port State Control targets for the 1st Quarter of the year had been met.
The Loran C proposal & Transport Council on the 27th also received mention.
Not releasable under the Freedom of Information Act, 1997

Peter O'Neill briefed the meeting on the following:
Inland fisheries and the newspaper item this morning on poaching; the review of Salmon Quotas; the Ports programme; regional ports; the Service Level Agreement with Marine Institute; & the proposed move by Central Fisheries Board to Maynooth.
There was a brief discussion on the possible reasons for the lack of applications received in response to PAD licensing initiative.
It was agreed that Joe Ryan would be asked to look at the co-ordination of the Department's areas of responsibility under the Water Directives Framework, & that a model for how best to deal with this broad area be discussed further at next week's meeting.

Eamonn Molloy provided an update on the RTÉ Licence fee and the Telecoms Council next week.

Martin Brennan agreed to forward a draft of the Energy Policy paper to the Secretary General. He also updated the meeting on Moneypoint generating station; the ballot on Rhode generating station; the Bord na Mona fertiliser proposal; AG's advice is awaited on Derrybrien windfarm licence; a decision is expected on planning for Corrib Gas Field in next 3 or 4 weeks.

Sara White advised on the progress made by the Regulation Working Group, the Devolution Group & closure of EIOP programmes.
A visit by Minister to Adelaide Road is to be arranged & there was a brief discussion on the removal of asbestos from the Nurses Home, & the need to temporarily remove the Coast Guard operations from the building.

9. **FOI Update**

It was agreed that the format of FOI report to MC was much improved.
An FOI appeals committee is to be established.

10. **Forthcoming Events / Media Issues**

Not discussed

8. **Update from each Assistant Secretary**

Cecil Beamish gave an update on the main issues in his area of responsibility, including BIM's budget, the Shellfish Waters Directive, & numerous legal cases, including a case against Ireland under the Dangerous Substances Directives.

Maurice Mullen informed the meeting that Port State Control targets for the 1st Quarter of the year had been met
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A visit by Minister to Adelaide Road is to be arranged & there was a brief discussion on the removal of asbestos from the Nurses Home, & the need to temporarily remove the Coast Guard operations from the building

9. FOI Update

It was agreed that the Journal of FOI report to MO was not to be approved.
An FOI appeals committee is to be established.

10. Forthcoming Events / Media Issues

No responses

11. **Any Other Business**
Outstanding Annual Reports for 2002 for SSB's under the Department & Performance Related Pay for CEO's received mention.
Martin Brennan suggested that a template outlining the Shareholder mandate be established, & it was agreed that Dave Hanley would be asked to prepare this.

12. **Date of Next Meeting**
25 March at 3.00pm in Leeson Lane.

11. **Any Other Business**

Outstanding Annual Reports for 2002 for SSB's under the Department & Performance Related Pay for CEO's received mention.

Martin Brennan suggested that a template outlining the Shareholder mandate be established, & it was agreed that Dave Hanley would be asked to prepare this.

12. **Date of Next Meeting**

25 March at 3.00pm in Leeson Lane.

REPORT OF MANAGEMENT COMMITTEE MEETING HELD ON TUESDAY 25 MARCH, 2003

In attendance: Secretary General Brendan Tuohy, Deputy SG Sara White, Martin Brennan, Cecil Beamish, Eamonn Molloy, Peter O'Neill, Ciaran O'Cuinn, Katherine Licken, Richard Moore, Tom McLoughlin & Catherine McDonald.

Apologies: Minister Dermot Ahern, Minister of State John Browne, & Maurice Mullen.

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1. **Minutes of last MC Meeting**
   Report of meeting of 18/03/03 approved.

2. **Government Meeting Decisions / Update**
   Not releasable under Section 19 (meetings of the Government) of the Freedom of Information Act, 1997.

3. **Legislation Priorities for Department**
   The following Bills received mention: Sea Fisheries (Consolidation) Bill, the Fisheries (Amendment) Bill; the Coastal Zone Management Bill & the Mercantile Marine (Amendment) Bill.

4. **Statement of Strategy/Annual Report**
   The Statement of Strategy is nearing finalisation, and the printers are on standby. The Secretary General would like to launch this before Easter if possible.

   Sara White will arrange for a draft of the Annual Report to be circulated to MC next week. Martin Brennnan suggested the inclusion of an appendix to include information on the State Bodies under the aegis of Department. It was agreed that this would be useful and could be done either as an appendix or as a separate publication.

5. **Early Warning Report (informal)**
   Nil

6. **Expenditure Management 2003**
   Sara White briefed the group on her recent meeting with Jim O'Brien of the Department of Finance re User Charges. The Secretary General is due to meet with Mr. O'Brien next week also.

7. **EU Agenda Overview and Presidency preparation**
   It was agreed that the EU Agenda Overview need only be circulated electronically, with a summary page outlining any recent changes to be discussed at meeting.

REPORT OF MANAGEMENT COMMITTEE MEETING
HELD ON TUESDAY 25 MARCH, 2003

In **attendance:** Secretary General Brendan Tuohy, Deputy SG Sara White, Martin Brennan, Cecil Beamish, Eamonn Molloy, Peter O'Neill, Ciaran O'Quinn, Katherine Licken, Richard Moore, Tom McLoughlin & Catherine McDonald.

Apologies: Minister Dermot Ahern, Minister of State John Browne, & Maurice Mullen.

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5. **Early Warning Report (Informal)**
Nil

6. **Expenditure Management 2003**
Sara White briefed the group on her recent meeting with Jim O'Brien of the Department of Finance re User Charges. The Secretary General is due to meet with Mr. O'Brien next week also

7. **EU Agenda Overview and Presidency preparation**
It was agreed that the EU Agenda Overview need only be circulated electronically, with a summary page outlining any recent changes to be discussed at meeting

There was a brief discussion on the resource & cost issues surrounding the hosting of any major conference or an Informal Council meeting in Dublin during the Presidency.

8. **Update from each Assistant Secretary**

Cecil Beamish is to meet with the EU Commission on the 19th re the issue of the Irish Box. He advised also that the consultation process on the inshore licence scheme has now closed, & spoke briefly re safety tonnage, fishing fleet capacities, & the GPS.

Peter O'Neill briefed the meeting on the following:
Inland fisheries; the proposed move by the Central Fisheries Board to Maynooth; & the clean-up required at Silvermines.
Both Mr. O'Neill & the Secretary General will visit the Marine Institute on the 3rd of April, and it is hoped that the Service Level Agreement with the Institute will be signed on that date.
A decision on Corrib Gas field is now expected from An Bord Pleanala on the 17th of April. Mr. O'Neill also mentioned that they are waiting for advice from the Chief State Solicitor's office on a number of issues in his area.

Martin Brennan advised the meeting on likely changes in oil prices due to the war in Iraq. At the moment prices remain stable.
The Scandinavian firm Fortum are selling their Edenderry generating plant to EON, and Mr. Brennan commented on the lack of small players in the recently liberalised electricity market. Mr. Brennan also mentioned the IEA in-depth review on Ireland; that he was meeting Ed O'Connell of Bord Gais & INPC this evening; the outstanding vacancies on the Boards in the energy sector; the Derrybrien wind farm licence; & the Ministerial IEA meeting on the 28th & 29th of April.

Eamonn Molloy will meet with the Department of Finance next week to discus a possible strategic alliance & ESOP for An Post. The Broadcasting (Major Events Television Coverage) (Amendment) Bill, 2003 is expected to clear all stages in the Dáil on Wednesday next. Vodafone will launch their new 3G mobile network on the 3rd of May. RTE Statement of Commitments also received mention.

Sara White advised on the progress made by the Regulation Working Group & the Devolution Group. She is drafting an action plan for the Department on the sectoral & organisational requirements arising from the Sustaining Progress agreement and commitments under the Programme for Government.
Ms. White & Katherine Licken hope to have a proposal by the end of the week on the position of a Departmental Legal Advisor.
A visit by Minister to Adelaide Road is to be arranged.

9. **FOI Update**

There was a brief discussion on the resource & cost issues surrounding the hosting of any major conference or an informal Council meeting in Dublin during the Presidency.

8. **Update from each Assistant Secretary**

Cecil Beamish is to meet with the EU Commission on the 19th re the issue of the Irish Box. He advised also that the consultation process on the inshore licence scheme has now closed, & spoke briefly re safety tonnage, fishing fleet capacities, & the GPS

Peter O'Neill briefed the meeting on the following:
Inland fisheries; the proposed move by the Central Fisheries Board to Maynooth; & the clean-up required at Silvermines.
Both Mr. O'Neill & the Secretary General will visit the Marine Institute on the 8th of April, and it is hoped that the Service Level Agreement with the Institute will be signed on that date.
A decision on Corrib Gas field is now expected from An Bord Pleanala on the 17th of April. Mr. O'Neill also mentioned that they are waiting for advice from the Chief State Solicitor's office on a number of issues in his area.

Mario Brennan advised the meeting on likely changes in oil prices due to the war in Iraq. At the moment prices remain stable.
The Scandinavian firm Forum are selling their Edenderry generating plant to ESN, and Mr. Brennan commented on the lack of small players in the recently liberalised electricity market. Mr. Brennan also mentioned the IEA in-depth review on Ireland, that he was meeting Ed O'Connell of Bord Gais & INPC this evening; the outstanding vacancies on the Boards in the energy sector, the Derrybrien wind farm licence, & the Ministerial IEA meeting on the 28th & 29th of April.

Eamonn Molloy will meet with the Department of Finance next week to discuss a possible strategic alliance & ESOP for An Post. The Broadcasting (Major Events Television Coverage) (Amendment) Bill, 2003 is expected to clear all stages in the Dáil on Wednesday next. Vodafone will launch their new 3G mobile network on the 1st of May. RTE Statement of Commitments also received mention.

Sean White advised on the progress made by the Regulation Working Group & the Development Group. S he is drafting an action plan for the Department on the sectoral & organisational requirements arising from the Sustaining Progress agreement and commitments under the Programme for Government.
Ms. White & Siobhan Dolan hope to have a proposal by the end of the week on the possible roll of a Department Legal Section.
A visit by Minister to Adelaide Road is to be arranged

9. FOI Update

There was a discussion on reviewing the internal FOI procedures, & in particular, the use of the internet in particular. A draft proposal to be put to the next meeting.

10. Forthcoming Events / Media Issues

CMOD are hosting a seminar on Planning for the Irish EU Presidency on Monday March 31st in Farmleigh.

11. Any Other Business

The Secretary General met recently with Rory O'Donnel of NESC and asked the group for suggested inclusions for the NESC work programme. SSB's Annual reports for 2002; PRP for CEO's and pension fund valuations also received mention.

12. Date of Next Meeting

1st of April at 3.00pm in Leeson Lane.

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12. **Date of Next Meeting**
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Appendix 8

Appendix 8

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Copy

Our Ref: SP278/AM

County Secretary
Galway County Council
County Hall,
Prospect Hill
Galway

Issued.
22nd December 2003

Re: **Planning Application Reg. Ref. No. 02/3560 by Saorgus Energy Limited for permission for alterations to previously approved wind farm development at Toormacnevin, Bohaboy & Derrybrien North, Co. Galway.**
- Co-ordinating meetings of ad hoc group re landslide at Derrybrien in October 2003.

Dear Sir/Madam,

We refer to the above proposed development and the meetings between representatives of Galway County Council (Environment Section), the windfarm developer (ESBI), ESB Fisheries, the Shannon Regional Fisheries Board, and the National Parks & Wildlife Service (NPWS) of this Department which were arranged following the landslide in October 2003.

It is our understanding that the meetings of this ad hoc group were intended as a means of distributing and reviewing information on the landslide, particularly in relation to the impacts on surface waters, and as a means of keeping all parties informed of progress on the emergency works being carried out. It has now emerged that this ad hoc group does not report back formally to other sections of Galway County Council. As a result, many of the issues and concerns that were raised by NPWS and recorded in minutes of the meetings, may not have been passed on to other relevant sections of the Council, such as the Planning and Development Section.

It should be noted that, in addition to the landslide, the emergency works being carried out, and the likely impacts on designated conservation areas downstream, there are other serious concerns about the project, including possible future ecological impacts. In addition to proposals for monitoring from NPWS (see copy attached), other issues that were raised by NPWS in these meetings are outlined below.

1. NPWS should be provided with copies of all reports, including technical assessments, pertaining to the landslide and the development in general, and should be given an opportunity to comment.

2. There should be ecological assessment of any areas outside the limits of the windfarm footprint and works area that will be impacted in the course of emergency and stabilisation works. This assessment should include any areas that may be used for the removal and disposal of peat from the landslide area, the dams or the river.

3. There should be detailed consideration of the regeneration and future management of the damaged areas within the limits of the landslide. The revegetation of these areas will be a key element in their stabilisation and in the control of ongoing erosion and siltation.

4. In the course of site works and any new site drainage, areas of intact wet bog, (some with extensive pool systems) and the infilling lake, should be avoided. One such sensitive peatland area occurs near the summit, in the area bounded by turbines 60, 61, 62, 11, 66 and 67. There should be no negative impacts on these areas in the course of stabilisation works or any other works associated with the completion of this development.

5. It is our opinion that the original EIS for this development, including the extensions, was deficient in that it failed to identify many sensitive ecological areas and hydrological issues within the site. This was pointed out at the meetings and accepted by ESBI.

6. There should be a detailed report on how the current development deviates from the original EIS and planning conditions, including in terms of:
    - site layout (locations of site access roads and turbines);
    - construction methodology;
    - on-site quarrying and blasting;
    - siltation and pollution control measures (silt traps, settlement ponds, cement wash out facilities);
    - site drainage.

7. There should be a detailed report on the environmental impacts associated with the landslide and the emergency and stabilisation works. It should be noted that, under Article 6 of the Habitats Directive, the onus is on the developer to assess the indirect impacts on any designated sites (candidate Special Areas of Conservation - SACs or Special Protection Areas -SPAs) as a result of a plan or project. This is therefore required in relation to the impacts on sites downstream of the Owendalulleegh River: Lough Cutra cSAC (No. 299), Lough Cutra SPA (No. 4096), Coole-Garryland Complex cSAC (No. 252) and Coole-Garryland SPA (No. 4107).

8. There should be a detailed report and ecological assessment of any proposed new works at the site, including any changes to the site layout, site drainage or construction methodology. New planning applications should be submitted to Galway County Council for these changes, as appropriate.

It is our opinion that all Sections of the Galway County Council dealing with the proposed development and the resulting landslide should be informed of the above concerns and requirements regarding same. Accordingly this letter should be forwarded to all relevant personnel.

Yours faithfully,

Amanda Maguire
Site Protection Section
NPWS

Post Office Box No. 27,
Áras an Chontae,
Prospect Hill,
Galway.

Mo Thag:

Do Thag.

JM/MH RT1072

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COMHAIRLE CHONTAE NA GAILLIMHE
GALWAY COUNTY COUNCIL

Housing Loans/Grants
(091) 509 301

Housing Applications
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Environment
(091) 509 302

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Planning
(091) 509 308

Engineering
(091) 509 309

Register of Electors
(091) 509 310

Higher Ed. Grants
(091) 509 310

27th January, 2004.

The Secretary General,
Department of the Environment, Heritage & Local Gov
Custom House,
Dublin 1.

RE: Landslide at Derrybrien, County Galway

A Chara,

I wish to refer to your letter dated the 22nd December last dealing with the purpose and content of a number of meetings attended by representatives from your Department, the Shannon Regional Fisheries Board, E.S.B. Fisheries, E.S.B. International and the Environment Section of the County Council.

In general terms, the County Council would agree with your view of the purpose of these meetings, namely, to review environmental issues, exchange information and highlight various concerns. From this perspective the meetings have been extremely productive.

The Council is keenly aware of its obligations and duties under Environmental Legislation and accords a high priority to the protection of all habitats. In that context, it has always facilitated full disclosure of all information to interested parties including your Department. Please be assured that the County Council will continue to provide full co-operation to your Department and its officials are available to discuss any environmental aspect of the Derrybrien situation of concern to you.

With regard to the specific points raised in your letter, I reply as follows:-

1. The County Council will make available all relevant reports to your Department and will consider your comments thereon.

2. The County Council has inspected the site and assessed it for compliance with the Planning Permissions granted. The Planning Authority is satisfied that the development, thus far, is in compliance with the Planning Permissions granted

3. With regard to any new works proposed to be carried out on the site, all such works, unless exempted development, will constitute development for which Planning Permission will be required.

4. Whilst noting your view of the E.I.S. lodged with the Planning Authority, you should note that the contents of the E.I.S. was considered by both the County Council as Planning Authority and by An Bord Pleanala, both of whom granted Planning Permission.

5. The provision of an Ecological Assessment and the carrying out of works as described by you as well as the consideration of the regeneration and future management of the area damaged by the landslide are all matters for the developers.

6. The assessment of indirect impact on any designated sites is also a matter for the developer as, indeed, you have pointed out in your letter.

The dissemination of information within the County Council whether by formal circulation of minutes or by other direct means is a matter for the Council itself. Indeed the inference that Galway County Council is failing in some way to conduct its affairs to a sufficiently high standard is resented and I would wish to place on record the fact that grave exception is taken by the County Council to that inference.

Mise, le meas,

John Morgan
Director of Services
Roads and Transportation Unit

C.C. Mr. Tom O'Mahony,
Assistant Secretary,
Department of the Environment, Heritage & Local Government,
Custom House,
Dublin 1.

Mr John Morgan,
Director of Services,
Roads and Transport Unit,
PO Box 27,
Aras and Chontae,
Prospect Hill,
Galway.

Your Ref: JM/MH RT1072

Re: Landslide at Derrybrien, County Galway.

Dear Mr Morgan,

I refer to your letter dated the 27th January 2004 in connection with the above matter.

The Department welcomes the assurances given by Galway County Council in relation to habitat protection generally and the Derrybrien situation in particular. We further welcome the commitment at Point 1 of your letter to make all relevant reports available to this Department for comment.

We note also that the County Council is satisfied that the development thus far complies with the planning permission granted. The question of whether any future works would require planning permission is, of course, a matter for the local authority. The reference in paragraph 8 of our previous letter to submission of new planning applications, as appropriate, was not intended to suggest otherwise. We also accept, as stated at points 5 and 6 of your letter, that the issues referred to at those points are matters for the developer.

We note your position at point 4 of your letter regarding the EIS. Overall, our letter of the 22nd December was concerned with impacts of the landslide and assessments of future works. The reference to the EIS was mainly in the context of advising on sensitive peatland areas to be avoided in any future works.

The Department does not dispute that Galway County Council is operating to appropriate professional standards in relation to its planning and other key services and notes your affirmation to this effect.

Yours sincerely,

Amanda Maguire
Site Protection Section
NPWS

6th February 2004