

Summary of points covered at a very recent, annual meeting between representatives of DG Environment and UK NGOs

Enfringement update:

The DG Environment reported that the number of infringement cases they were working on “remained stable” without many new cases being opened, or indeed many being closed. The number of UK cases is typical for a country of its size too.

As a result of the Volkswagen scandal air quality is currently seen as a huge issue in Brussels, and since one of the Juncker Presidency’s mottoes is “go big on the big things, and small on the small things” the Division expect to be doing more work in this area over the coming year.

On the theme of big issues, the Circular Economy Package was used as an example of how it was possible to bring forward major proposals only once a range of senior politicians were engaged with the issue, since Juncker likes to look for consensus amongst small countries, unlike his predecessor who focused on the major players. The work was described as ‘realistic’ on things what would need to happen to get to a circular economy, but the ‘good for growth and the environment’ mantra was also mentioned.

A number of projects from the Investment Bank (8 of 28 projects) have at least a tangential “green” element to them, such as building renovation or off-shore wind farms.

Finally, the DG Environment have received no instructions to go easy on the UK in light of Brexit, so are continuing as normal.

Refit:

It seems that successful NGO campaigning has led to an improved UK position, i.e. to retain the Directives, but enforce them better, and that this is signed up to by around a dozen member states. In a last minute u-turn the UK was amongst 26 of 28 members states supporting better implementation rather than re-opening the Directives at a December meeting.

A document reviewing the conclusions of the refit process is due by June, but it was stressed that this will not contain any recommendations, and there is currently no time scale for when they might be produced.

There will be a change to Presidency at end of June, and the Netherlands will take over, but the Dutch are considered the “least friendly state to the Directives.”

It was conceded that it would be very difficult to dismantle the Directives anyway, although questions as to what ‘better implementation’ could mean. There was talk of a UK lead focus group on better implementation with industry and NGOs.

Article 6 of the Habitats Directive (fisheries management)

It was requested by MCS that pressure should be put on Defra to better implement Article 6(3):

A number of cases of inshore fisheries where authorities were still allowing oyster dredging and the pump scoop of mussels were mentioned.

Apparently there has been some concern amongst DG Environment over the Scottish Government always trying to use Article 6(2) of the Directive at times when 6(3) would be more appropriate.

Harbour Porpoise:

It is expected that Scotland will issue its own consultation on Porpoise SACs, but DG Environment have no details yet.

WDC have submitted an FOI request for Marine Scotland's meeting with off-shore wind developers, and believe that they have been sharing the SAC consultation details with them in advance of publication. DG Environment replied that they saw merit in being open with developer stakeholders from the beginning about the potential impact of SACs.

Socio-economic factors have become an explicit part of the SPA consultation process across the whole of the UK.

Marine Natura SPAs:

The UK Government doesn't seem to be taking this seriously, and has acknowledged that the currently available information is inadequate for maintenance extensions, but has no plans for any further surveys. They tend only to use NGO (RSPB) data where it supports government decisions.

SAC boundary issues:

RSPB wanted to know if the Commission's work on favourable conservation status could help encourage member states to examine SAC boundaries.

Apparently the largest Freshwater Pearl Mussel population in the UK (perhaps the world) sits outwith a SAC boundary.

Great Crested Newts:

The approach of safeguarding individual animal species is not viewed as having been successful by RSPB. Article 16.1 (work in the interests of nature conservation) has to be used with caution (due to previous infringement).

Water Framework Directive:

Implementation by member states is patchwork, with elements tacked onto other water related legislation and other measures. Some NGOs have legal actions already in place under the Directive.

The three key areas examined by DG Environment have been:

1. Diffuse Pollution – concerns over poor application in UK over Nitrogen and Phosphorous
2. Water Services (charging & polluter pays principle) – concerns with pricing in Northern Ireland
3. Hydromorphology

Water Protection Measures are binding rather than voluntary so have to be made to work. Over-reliance on voluntary measures was noted as a key concern. NGOs will provide DG Environment with a wish-list of actions for such areas.

Pillar 1 impact on tree retention on Welsh farms

The Welsh Government's interpretation of CAP will essentially deny farmers their basic payments for any land with more than 3 trees on it. This is likely to result in the loss of a lot of trees unless the Welsh Government adopt the more liberal interpretation of CAP used by Scotland and England.

This has been a recurrent theme over past 10 years. Past cases have included blackthorn hedges in Ireland, and DG Environment will look into it, and perhaps send a clarification or letter to the relevant Welsh Minister.

Access to Environmental Justice:

Very depressing update from rUK where proposed changes to cost regime mean:

- NGOs now risk getting cost orders against them for even intervening in a court case;
- court fees are being increased;
- PCO applicants will have to declare all assets which for NGOs apparently means potentially having to provide the courts with lists of members and other people giving you money, and them being potentially liable if you lose!;
- caps can be challenged at any stage in the case;
- proposals on PCOs essentially mean revert to pre Corner House rules;
- language in consultation that 'a member of the public' can apply would exclude NGOs etc - ?slip of the pen, can this be what is intended?
- no data in consultation papers to justify these changes
- N.I. not as bad
- Legal Aid consultation ongoing? that will probably just lead to another one...

Scottish NGO updated briefly on Scotland where PEOs have actually been improved to better reflect Aarhus principles, but cost regime overall still problematic especially re legal aid and court fees.

A2EJ a Commission priority - they have a ruling from the CJEU that they are obliged to implement. It was suggested that the UK Government's regressive costs proposals had perhaps taken the Commission by surprise, and they might be waiting to see where things land before deciding on a course of action. Further, it was suggested that had the UK Government not re-opened the whole thing up, the Commission might have said PCOs / PEOs are great, well done, and that could have been the end of the story. However, the issue of court fees was raised as an interesting / helpful angle to push on - court fees at the court of session are extremely high and eyebrows were raised at the mention of the sums involved in Walton vs Scottish Ministers. An update on court fees in particular, and continued difficulties re PEOs etc would be useful. The Commission appear nervous about another ruling from the CJEU on following up on judgments where the Member State was moving things forward during the legal process. EU vs UK re prohibitive expense case did take account of the incoming PCO / PEO regime, but they are getting their lawyers to check everything.

AOB

Scottish NGO asked for an update on the infringement proceedings against UK re Air Quality, wrt. Planned correspondence with the Commission re Scottish specific compliance. Formal Notice on NO2 (but not PM10) in 2014 covering the 16 zones in recent Client Earth case, including Glasgow. It didn't make sense to go to a Reasoned Opinion while the Client Earth case was ongoing, but now the Commission has the UK regional plans and are assessing them, they are looking not just at the 16 zones, but all zones, with a view to whether the Formal Notice needs changing. The test of the plans will be whether they can achieve compliance and whether they will do it as soon as possible.

Produced via the LINK Secretariat, late January 2016