



The Environmental Pillar,

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Dear Minister Coveney,

I am writing to highlight to you issues raised at a meeting in Clonakilty earlier this month. As I understand it the issue detailed below was raised by both the EU Commission and our representatives on the Shadow Monitoring Committee for the Operational Programme (OP) of the European Maritime and Fisheries Fund, (EMFF).

The issue is in relation to the impact on the legally required assessment of the Draft OP by the EU Commission and the Public Consultation obligations, given the failure to provide concurrently with the Draft OP, a National Strategic Plan on Aquaculture (NSPA). As you know, the NSPA is required as part of the ex-ante conditionalities for the Draft OP. Consequently I urge you to extend the public consultation period your Department has launched for the programme until the entire programme can be properly reviewed by the public and other stakeholders. Currently the consultation is due to conclude this Friday, May 1st.

Given the concerns on how Union Priority 2 Aquaculture is being handled - you will be aware under the Common Provisions Regulation¹, Article 19, the EU Commission is entitled to suspend all or part of the payments.

I wish to also wish to highlight a number of legal obligations which in our opinion are compromised and the potential significant impacts on EMFF funding for Ireland.

¹ REGULATION (EU) No 1303/2013 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 17 December 2013 laying down common provisions on the European Regional Development Fund, the European Social Fund, the Cohesion Fund, the European Agricultural Fund for Rural Development and the European Maritime and Fisheries Fund and laying down general provisions on the European Regional Development Fund, the European Social Fund, the Cohesion Fund and the European Maritime and Fisheries Fund and repealing Council Regulation (EC) No 1083/2006



These legal obligations include:

1. Requirements of the EMFF Regulation² and Common Fisheries Policy, (CFP) and Common Provision Regulation (CPR) for EU Structural Investment Funds;
2. Environmental Impact Assessment and Consultation Obligations arising from the SEA Directive³ and the Aarhus Convention⁴ in respect of the assessment of environmental effects, effectiveness of public consultation and trans-boundary impact assessment, where this latter also arises from our obligations under the Espoo Convention⁵;

In our view, the approach Ireland is taking to the Draft OP through its failures to provide concurrently the draft NSPA – serve to compound Ireland’s ongoing failures to adequately resolve a number of specific failures highlighted in the Judgement of the Court of Justice of the EU against Ireland in c-418/04 back in 2007, and which remain un-resolved. That judgement highlighted *inter alia* a legacy of failure by Ireland in respect of the legal compliance of our Aquaculture with EU Environmental Law. The approach currently being pursued by Ireland remains of serious concern to a number of our member organisations involved with this area. The EMFF should provide for an opportunity to progress this if properly addressed, and we have no doubt this will be of concern to both DG Mare and DG Envi.

I therefore, as indicated earlier, wish to formally request that the deadline for Consultation responses to the Draft OP and Environmental Report produced as part of the Strategic Environmental Assessment, SEA pursuant to the SEA Directive be extended beyond the 1st of May. This would be to allow for:

- a necessary re-launch of the Draft OP as outlined below; and
- to facilitate the legally required “effective” public consultation in conjunction with the required NSPA, and the associated SEA reports to support Ireland’s adherence to its legal obligations;

² REGULATIONS REGULATION (EU) No 508/2014 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 15 May 2014 on the European Maritime and Fisheries Fund and repealing Council Regulations (EC) No 2328/2003, (EC) No 861/2006, (EC) No 1198/2006 and (EC) No 791/2007 and Regulation (EU) No 1255/2011 of the European Parliament and of the Council

³ DIRECTIVE 2001/42/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 27 June 2001 on the assessment of the effects of certain plans and programmes on the environment

⁴ THE CONVENTION ON ACCESS TO INFORMATION, PUBLIC PARTICIPATION IN DECISION-MAKING AND ACCESS TO JUSTICE IN ENVIRONMENTAL MATTERS done at Aarhus, Denmark, on 25 June 1998

⁵ CONVENTION ON ENVIRONMENTAL IMPACT ASSESSMENT IN A TRANSBOUNDARY CONTEXT United Nations 1991



This is essential in order to support the environmental, social and economic sustainability of the programmes and to facilitate Ireland's optimal uptake of the 147 million Euro available from the EU EMFF.

Before I outline the issues involved in more detail below - I also wish to request copies by return of:

- The screening decisions on transboundary impacts made in respect of the Draft OP and the NSPA; and
- The Partnership Agreement signed by Ireland in the later part of last year in respect of the European Structural & Investment (ESI) Funds.

Below follows a more detailed overview of the legal requirements and argument above.

1. Requirements of the EMFF Regulation and Common Fisheries Policy, CFP and Common Provision Regulation, CPR for EU Structural Investment Funds.

To be clear from the outset, we understand that:

- a) According to the EMFF Regulation, the NSPA is an *ex-ante* conditionality, meaning it has serious implication on the adoption of the EMFF OP, and that its fulfilment is of the utmost importance in the context of the CFP;
- b) *Ex ante* conditionalities are a fundamental, and in this case missing and compromised element of the current draft OP – and on which there can be thus no adequate public consultation at this point;

These following extracts from the EMFF regulation are the basis for the above points.

Article 18 and 9 and the associated Annex IV – set out the basic and fundamental requirements in respect of this as below:

“Article 18 Content of the operational programme

1. *In addition to the elements referred to in Article 27 of Regulation (EU) No 1303/2013, the operational programme shall include:*

.....

(d) the assessment of the specific ex ante conditionalities referred to in Article 9 of and in Annex IV to this Regulation and, where required, the actions referred to in Article 19(2) of Regulation (EU) No 1303/2013;



....”

and where the ex ante conditionality of the NSPA is provided for pursuant to Article 9 and associated Annex IV of the EMFF Regulation.

“Article 9

Specific ex ante conditionalities The specific ex ante conditionalities referred to in Annex IV shall apply to the EMFF.”

Where Annex IV specifies for UP 2 - the ex ante conditionality to be:

“The establishment of a multiannual national strategic plan on aquaculture, as referred to in Article 34 of Regulation (EU) No 1380/2013, by 2014”

In short the ex ante conditionality in respect of Aquaculture is not fulfilled by Ireland, compounding a legacy of failures in this area as highlighted by the judgement of the CJEU in c-418/04.

- c) Article 6 of the EMFF sets out the Union Priorities (UP) and associated objectives, where the relevant priority and objectives on Aquaculture are (emphasis added):

“Article 6 Union priorities

The EMFF shall contribute to the Europe 2020 strategy and to the implementation of CFP. It shall pursue the following Union priorities for the sustainable development of fisheries and aquaculture and related activities, which reflect the relevant thematic objectives referred to in Regulation (EU) No 1303/2013:

....

*(2) Fostering **environmentally** sustainable, resource-efficient, innovative, competitive and knowledge-based aquaculture by pursuing the following specific objectives:*

(a) the provision of support to strengthen technological development, innovation and knowledge transfer;

(b) the enhancement of the competitiveness and viability of aquaculture enterprises, including the improvement of safety and working conditions, in particular of SMEs;

(c) the protection and restoration of aquatic biodiversity and the enhancement of ecosystems related to aquaculture and the promotion of resource-efficient aquaculture;



(d) the promotion of aquaculture having a high level of environmental protection, and the promotion of animal health and welfare and of public health and safety;

(e) the development of professional training, new professional skills and lifelong learning.

....”

- d) Further to Art 19(5) of the CPR, the Commission may decide further to the assessment of the Draft Op, to suspend all or part of the interim payments in respect of a Union Priority. In this case the relevant priority would be UP2 (Aquaculture).

“Article 19 Ex ante conditionalities

....

5. The Commission may decide, when adopting a programme, to suspend all or part of interim payments to the relevant priority of that programme pending the completion of actions referred to in paragraph 2 where necessary to avoid significant prejudice to the effectiveness and efficiency of the achievement of the specific objectives of the priority concerned. The failure to complete actions to fulfil an applicable ex ante conditionality which has not been fulfilled at the date of submission of the Partnership Agreement and the respective programmes, by the deadline set out in paragraph 2, shall constitute a ground for suspending interim payments by the Commission to the priorities of the programme concerned that are affected. In both cases, the scope of suspension shall be proportionate, taking into account the actions to be taken and the funds at risk.

....”

Therefore in conclusion on this point, while we appreciate the Commission is not supposed to approve the NSPA, it has to be consistent with the EMFF OP. If the two are not consistent the plan will need to be remediated to include a timetable of actions and the bodies responsible and such would require further consultation, not least because of the Aarhus Convention Article 6.10 and obligations pursuant to the SEA Directive. However we further submit the Draft OP and its required Strategic Environmental Assessment, (SEA) are significantly compromised consequent on Ireland’s failure to provide the NSPA concurrently with them at this point as outlined further below.

We further submit the necessary evaluations required under Article 116 of the EMFF regulation are also compromised by this and the effective consultation in respect of same.

In addition to the above compliance issues - we submit the current approach is far from ideal and serves to significantly compromise the effectiveness of our consultation response, and the required and necessary assessment of environmental impacts.



We now turn to this point in more detail.

2. Environmental Impact Assessment and Consultation Obligations arising from the SEA Directive and the Aarhus Convention in respect of the assessment of environmental effects, effectiveness of public consultation and transboundary impact assessment, where this latter also arises from our obligations under the Espoo Convention

The obligation for an SEA for the Draft OP and NSPA are not at issue – their requirement being indisputable.

However given the failure to provide the NSPA concurrently and its SEA with the Draft OP and its SEA, we submit the following:

a) Scope and Content

The obligation under Art 4 of the SEA Directive to conduct the environmental assessment of the Draft OP for the EMFF, before adoption or submission to the legislative procedure - is significantly compromised. This is consequent on the failure to provide the NSPA concurrently with it given the scope and content of both plans.

b) The effectiveness of the consultation

This has been further compromised consequent on:

- The limited timeframe afforded given the one month includes the Easter Break; and
- Given the nature of material required to be considered is in the order of 1400 pages of information; and
- The failure to communicate and engage the public concerned with the consultation consequent on the misleading branding of the programme – which in stating it is a “Seafood Development Programme” wholly fails to capture the breath of sustainability issues and concerns which are the proper consideration of an operational programme for the EMFF, as provided in Art 1 of the Regulation which states:

“Article 1 Subject-matter

This Regulation defines Union financial measures for the implementation of:

- (a) the Common Fisheries Policy (CFP);*
- (b) relevant measures relating to the Law of the Sea;*
- (c) the sustainable development of fisheries and aquaculture areas and inland fishing; and*
- (d) the Integrated Maritime Policy (IMP).”*



- and Where Seafood development which is the brand and focus of the title you as Minister has given the programme is but a component of this.

In short, in terms of point (a) above on the compromised scope and content:

- The fundamental obligation of the SEA directive per Article 1 is to facilitate the integration of environmental considerations into the adoption of the plan, with a view to promoting sustainable development.
- However given the nature of the elements and effects which are required to be considered under Article 5 and the indisputable interdependency and commonality of these elements for the Draft OP and the NSPA – you can't consider these elements adequately or at all for one of these plans in the absence of understanding what is proposed for the other.
- The consideration of public consultation is a fundamental component of the assessment of environmental effects which the competent authority is **required** to consider – and is therefore necessarily compromised.
- Finally the public's rights to such consultation entitlement pursuant to the Aarhus Convention Articles 7 are also compromised.

For convenience the associated relevant provisions on these points from the SEA Directive are set out below:

“Article 4

General obligations

1. The environmental assessment referred to in Article 3 shall be carried out during the preparation of a plan or programme and before its adoption or submission to the legislative procedure.”

“Article 1

Objectives

The objective of this Directive is to provide for a high level of protection of the environment and to contribute to the integration of environmental considerations into the preparation and adoption of plans and programmes with a view to promoting sustainable development, by ensuring that, in accordance with this Directive, an environmental assessment is carried out of certain plans and programmes which are likely to have significant effects on the environment.”

In respect of content and consultation we note:

“Article 5

Environmental report

1. Where an environmental assessment is required under Article 3(1), an environmental report shall be prepared in which the likely significant effects on the environment of implementing the plan or programme, and reasonable alternatives



taking into account the objectives and the geographical scope of the plan or programme, are identified, described and evaluated. The information to be given for this purpose is referred to in Annex I.”

Where Annex I provides:

ANNEX I

Information referred to in Article 5(1)

The information to be provided under Article 5(1), subject to Article 5(2) and (3), is the following:

- (a) an outline of the contents, main objectives of the plan or programme and relationship with other relevant plans and programmes;*
- (b) the relevant aspects of the current state of the environment and the likely evolution thereof without implementation of the plan or programme;*
- (c) the environmental characteristics of areas likely to be significantly affected;*
- (d) any existing environmental problems which are relevant to the plan or programme including, in particular, those relating to any areas of a particular environmental importance, such as areas designated pursuant to Directives 79/409/EEC and 92/43/EEC;*
- (e) the environmental protection objectives, established at international, Community or Member State level, which are relevant to the plan or programme and the way those objectives and any environmental considerations have been taken into account during its preparation;*
- (f) the likely significant effects (1) on the environment, including on issues such as biodiversity, population, human health, fauna, flora, soil, water, air, climatic factors, material assets, cultural heritage including architectural and archaeological heritage, landscape and the interrelationship between the above factors;*
- (g) the measures envisaged to prevent, reduce and as fully as possible offset any significant adverse effects on the environment of implementing the plan or programme;*
- (h) an outline of the reasons for selecting the alternatives dealt with, and a description of how the assessment was undertaken including any difficulties (such as technical deficiencies or lack of know-how) encountered in compiling the required information;*
- (i) a description of the measures envisaged concerning monitoring in accordance with Article 10;*
- (j) a non-technical summary of the information provided under the above headings.*



Where the consultation provisions stipulate:

Article 6

Consultations

1. The draft plan or programme and the environmental report prepared in accordance with Article 5 shall be made available to the authorities referred to in paragraph 3 of this Article
2. The authorities referred to in paragraph 3 and the public referred to in paragraph 4 shall be given an early and effective opportunity within appropriate time frames to express their opinion on the draft plan or programme and the accompanying environmental report before the adoption of the plan or programme or its submission to the legislative procedure.
3. Member States shall designate the authorities to be consulted which, by reason of their specific environmental responsibilities, are likely to be concerned by the environmental effects of implementing plans and programmes.
....”

Additionally we note the obligations for transboundary impact assessment pursuant to Article 7 and are concerned regarding these, and therefore have requested from you the screening decisions made in respect of such impacts by return.

Finally, we note the fundamental nature of the consultation as a component of the environmental assessment required by the competent authority conducting and environmental assessment in accordance with the definition of same in the Directive:

“Article 2

Definitions

For the purposes of this Directive:

...

*(b) ‘environmental assessment’ shall mean the preparation of an environmental report, the carrying out of consultations, the taking into account of the environmental report **and** the results of the consultations in decision-making and the provision of information on the decision in accordance with Articles 4 to 9;*

...”

In relation to the second point (b) above in respect of “the effectiveness of the consultation” - we specifically note the requirements of the SEA Directive and Aarhus Convention Article 7, and Article 6(3), (4) and (8) in particular in respect of the effectiveness of the Consultation. We submit that:



- The absence of the NSPA and its SEA, significantly compromise the consultation for the Draft OP and its SEA given the content implications, and thus necessarily the effectiveness of the consultation.
- The timeframes afforded are such as to compromise effective consultation given the timeframe of one month which incorporated the Easter Holiday period when many people and particularly those with families are on vacation, and given the volume and technical nature of much of the material which extends to over:
 - 356 pages between the Draft Op and associate Environmental Report; and in the order of
 - 1000+ pages of EU legislation and Regulation which it needs to be read in the context of
- That in branding the Draft OP “Seafood Development Programme”, the Minister has, with respect, done a disservice to the sustainable and environmental focus of the EMFF, and failed to ensure that the pertinence and relevance of the programme is clear to multiple stakeholder groups in the widest definition of the public as required by the Aarhus Convention Articles 7, and Article 6(3), (4) and (8) in respect of both effective consultation and encouragement of public engagement. We therefore submit that not only an extension to the consultation is required, but a re-branding and a re-launch of the consultation is required to ensure the obligation in respect of effective consultation is addressed by Government.

In conclusion, we thank the Minister for his consideration of our remarks and look forward to:

- receiving the requested documents by return, and
- an assurance and public communication regarding the proposals herein so that:
 - effective consultation can be facilitated as legally required, and
 - the funding for Ireland from the EU is not compromised, and
 - the effectiveness and sustainability of the programmes and plans proposed can be properly supported as intended by the underpinning legislative provisions.

Kind regards

Coordinator of The Environmental Pillar