



To: Directors of Planning Services, City and County Councils

CC: Chief Executives, City and County Councils
Senior Planners, City and County Councils
An Bord Pleanála
Directors of Regional Assemblies
Office of the Planning Regulator

Circular Letter: EUIPR 03/2020

9 September 2020

**Recent High Court judgments regarding the scope of the
Environmental Impact Assessment (EIA) Directive with respect to
Solar Farm Developments**

I am writing to bring to your attention two recent High Court judgments which provide further clarification on the scope of Directive 2011/92/EU, as amended by Directive 2014/52/EU, on the assessment of the effects of certain public and private projects on the environment (“the EIA Directive”) as it applies to solar farm developments, namely:

1. *Sweetman v. An Bord Pleanála & Ors* [2020] IEHC 39 Judgment delivered by Mr. Justice McDonald on 31 January 2020 see Appendix 1; and
2. *Kavanagh v. An Bord Pleanála & Ors* [2020] IEHC 259 Judgment delivered by Mr. Justice O’Moore on 29 May 2020, see Appendix 2.

Copies of the High Court judgments are publicly available to view or download from the Courts Service’s website <https://www.courts.ie/judgments> and are enclosed at Appendix 1 and Appendix 2.





The judgments relate to judicial review proceedings taken against two separate decisions of An Board Pleanála (“the Board”), granting permission for the development of a solar farm in each case, following third party appeals of decisions made by Wicklow County Council and Cork County Council, respectively, to grant permission for the same developments.

The implications of the two judgments are of significance to planning authorities in that they affirm the understanding that solar farm developments of the nature of those the subject matter of these judicial reviews do not fall within the classes of projects in either Part 1 or Part 2 of Schedule 5 to the Planning and Development Regulations 2001, as amended (“the 2001 Regulations”).

The judgments also clarify that the interpretation of Paragraph 3(a) of Annex II to the EIA Directive, which reads “*Industrial Installations for the production of electricity, steam and hot water (projects not included in Annex I)*” and as transposed into Part 2 of Schedule 5 to the 2001 Regulations, must be read conjunctively rather than disjunctively. Paragraph 44 of the judgment of Mr. Justice McDonald confirms that “...*there can be no doubt that the generation of electricity simpliciter does not fall within Class 3 (a) unless the relevant project also generates heat and steam.*”

Planning authorities are asked to note the interpretation of the High Court with respect to EIA requirements and proposals for development of a similar nature to those the subject of these judgments. It should also be noted that it is not necessarily the case that solar farm projects could never require EIA. Circumstances may arise in which a solar farm project may be subject to a requirement for EIA if, for example, one or more aspects of the project potentially comes within the scope of any of the project classes listed in Annex I or Annex II of the Directive and consequently, Part 1 and Part 2 of Schedule 5 to the 2001 Regulations.



Any queries in relation to this Circular letter should be emailed to euplanningregulation@housing.gov.ie.

A handwritten signature in black ink that reads "Eamonn Kelly".

Eamonn Kelly
Principal Officer
EU & International Planning Regulation