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Patricia Kelly
Principal Officer, Forestry Division
Department of Agriculture, Food and
the Marine
M +353 (0) 86 8287415 T +353 (0) 53
9163410
email: patricia.kelly@agriculture.gov.ie

Dear Mrs Kelly,

Further to exchanges during 2020 and 2021 between the Forestry Division of Ireland's Department of Agriculture, Food and Marine (DAFM) and colleagues from DG ENV, D1, including my predecessor, Ms Claudia Olazabal, I would like to come back to certain concerns related to Irish afforestation. This is in the context of Ireland's proposed Forestry Programme, 2023-2027 (which is intended to form the basis of an upcoming state aid application, which will require environmental scrutiny by the Commission¹) and Forest Strategy Implementation Plan.

As part of a strategic environmental assessment (SEA) of these, a SEA Report was published in October 2022. The SEA Report appears not to sufficiently address these concerns and I hope you will find it useful to recall some of the chief concerns now while the SEA process is ongoing and before the formal submission of a state aid application.

Against the background of the last state-aided forestry programme, DG ENV has previously drawn attention to risks of inappropriate afforestation of sensitive habitats such as peatlands and negative effects on areas of high ecological value including areas under high natural value farming, notably with regard to open landscapes important for Hen Harrier, *Circus cyaneus* and ground-nesting birds such as the breeding Curlew, *Numenius arquata*. It has also expressed concerns about proposed planting in river catchments that are critical for the Freshwater Pearl Mussel, *Margaritifera margaritifera*. This is in the context of the Birds Directive, 2009/147/EC, the Habitats Directive, 92/43/EEC, the Environmental Impact Assessment Directive (or "EIA") Directive, 2011/92/EU, the Aarhus Convention on access to information, public participation and access to justice in environmental matters ("the Aarhus Convention"), related case-law of the Court of Justice of the European Union (CJEU), and environmental conditions

¹ Case C-594/18 P Austria v Commission

attached to the last (prolonged) state aid decision on Irish afforestation, SA.39783 (2014/N)².

Evidence previously sent to your authorities points to continued extensive planting on peat soils under the current forestry programme. This is consistent with the continued dominant role in Irish forestry policy and practice of Sitka spruce, *Picea sitchensis* a fast-growing exotic conifer historically strongly associated with afforestation of Irish peatlands; and with your department's 2017 document entitled "Land types for afforestation", which, amongst other things, deems peatlands suitable for planting if they are less than 50 centimetres in depth. While the screening system Ireland put in place following the CJEU ruling in C-392/96 appears to have helped avoid afforestation within Natura 2000 peatland sites, the latter make up only part of Ireland's peatland coverage. Ireland's last Article 17 report under the Habitats Directive (2019)³ notes that all of the following peatland habitat types have bad conservation status, with many deteriorating, and that afforestation is a negative pressure: wet heath (4010); dry heath (4030); active raised bogs (7110) and degraded raised bogs (7120); blanket bog (7130); and depressions on peat substrates of the Rhynchosporion (7150). The SEA Report does not appear to address this or the biodiversity and climate implications of converting peatlands to forestry, in particular short-rotation even-aged Sitka spruce stands destined for periodic clear-fell (and associated disturbance of organic soils). In practice, no EIAs are undertaken, so there is no assessment of effects (including cumulative effects) at project level either. This is despite the growing recognition of the climate and biodiversity importance of peatlands, reflected in the Biodiversity Strategy, for instance – and also the importance of forestry practices that minimise soil disturbance.

Evidence also indicates that afforestation has been impacting negatively on rare grassland habitats. This does not appear adequately reflected in the SEA Report either.

The SEA Report also does not appear to adequately address concerns about the piecemeal encroachment of forestry plantations and roads into open landscapes under high natural value farming and relied upon by open habitat birds, notably the Hen Harrier and the breeding Curlew. Breeding Curlew numbers have collapsed from an estimated 3300-5500 pairs in the late 1980s to no more than 150 pairs at present. Mention can also be made of other breeding waders of wet grasslands such as the Lapwing, *Vanellus vanellus*, Redshank, *Tringa tetanus*, and Common Snipe, *Gallinago gallinago*, all of which have seriously declined in Ireland.

² See in particular paragraphs 34 to 36:

"(34) All afforestation under the four sub-schemes will require consent from the Forest Service in order to ensure that the site is suitable. Afforestation will be avoided on environmentally unsuitable sites.

Afforestation will be adapted to environmental sensitivities, such as habitats and species (including NATURA sites, Freshwater Pearl Mussel and Hen Harrier), water quality (including fisheries sensitive areas, waterbody status, acid sensitive areas), archaeology, landscape, and local sensitivities.

(35) The measure will comply with Natura 2000 management plans or, in the absence thereof, with the general conservation objectives of the sites (non-deterioration of the sites as a minimum requirement).

(36) The inappropriate afforestation of sensitive habitats such as peat lands and wetlands will be avoided, as well as the negative effects on areas of high ecological value including areas under high natural value farming."

³https://www.npws.ie/sites/default/files/publications/pdf/NPWS_2019_Vol1_Summary_Article17.pdf

Wider countryside measures under Article 4(4), second sentence of the Birds Directive are very important for these species. Much of the Hen Harrier population is found outside Irish SPAs, in particular in a few areas of concentration⁴. The breeding Curlew appears not to be a recognised interest in any SPA, making Article 4(4), second sentence crucial. In its ruling against Ireland in Case C-418/04 for its failure to comply with Article 4(4), second sentence, the CJEU pointed to the need for a serious attempt to protect habitats found outside SPAs, and referred to a requirement of targeted action and measures that constitute a coherent whole⁵.

Although landscape-level planning for forestry has been mentioned as an idea for achieving the right balance between new forestry and wider countryside obligations, our understanding is that such planning still does not sufficiently occur. Afforestation appears to be still haphazard and often results in relatively, small scattered blocks of forest on open habitats such as wet grasslands, leading to habitat loss and fragmentation and increased predation. Safeguards are dependent on the adequacy of the screening of individual projects – and hence on the application of the EIA Directive. Once again, however, no EIAs are undertaken in practice, and this mechanism for addressing concerns is not effective. Evidence strongly points to the need for enhanced EIA screening and coherence with farming-related conservation measures aimed at conserving birds of the wider countryside which are of conservation concern.

In the past, we have raised detailed concerns about the Freshwater Pearl Mussel (FPM), in particular as regards the top eight Irish river catchments of this aquatic species, which account for 80% of the national population and which represent the top 8 populations in the Atlantic Region of the EU. The FPM now has unfavourable conservation status in Ireland, is highly threatened, and shows negative trends in terms of populations and habitats. Forestry is one of the main negative pressures because of associated drainage, effects on hydrological function, interference with juvenile food supply and release of nutrients and sediments (the last in particular related to Ireland's clear-fell forestry model). We note that the SEA Report now proposes native woodland planting in these 8 catchments as a mitigation measure. A switch to native woodland in other catchments might be very welcome, but, in these very special river catchments, it is contrary to the advice of Ireland's leading Freshwater Pearl Mussel scientists. The ongoing loss of mussels through lack of replacement of young juveniles and their deaths during low-flow episodes reflects the lack of water retention in forested areas and the high levels of water loss from interception of rain and evapotranspiration of catchment water by trees. This interception and evapotranspiration would not be mitigated by replanting with native trees, as it would not reduce interception or evapotranspiration. The fact that the advice of the scientists does not appear reflected in the SEA Report is itself of concern.

These aspects highlight, amongst other things, the importance of ensuring that environmental NGOs and independent experts can actively participate in environmental decision-making, in line with the EIA Directive, the Aarhus Convention and the Habitats Directive, so that the authorities are able to take into consideration all relevant views and data. We have raised with you concerns that public participation fees introduced in 2020 might act as an obstacle to effective participation, especially where NGO concerns relate to the cumulative effects of a multiplicity of individual projects, each of which will require payment of a separate fee in order for opinions to be taken into account.

⁴Ballyhouras; Blue Stack Mountains, Pettigo Plateau and South Donegal; Leitrim, Slieve Rushen, Cavan.

⁵ Paragraphs 190 and 191

I trust that you will find the above comments of assistance.

Yours faithfully,

Ion Codescu
Head of Unit