

CHECK AGAINST DELIVERY

Minister Carroll MacNeill – appearance before the Seanad Select Committee on the Scrutiny of draft EU related Statutory Instruments

Wednesday 17 July 2024

Opening Remarks

Mr. Chairman, Senators,

Thank you for inviting me to meet with the Committee today to discuss issues regarding the transposition of EU Directives.

The Committee's letter of invitation indicates a wish to discuss the provision of draft Statutory Instruments to the Committee by Departments, as well as the matter of their publication by the Committee. I received a letter on these same issues from Senator Buttimer, on behalf of the Seanad Committee on Parliamentary Privileges and Oversight. My remarks today are intended as a response to the concerns raised.

I am aware that this Committee's Orders of Reference were extended on the 9th of July to include oversight of infringement actions against Ireland, including where financial penalties have been applied. I agree that it is right that the Houses of the Oireachtas should hold the Executive to account for not transposing EU law on time or incorrectly. However, I think it is worth highlighting that the number of infringement actions against Ireland is currently at a record low of 46 cases. I should also say that fines have been imposed on

Ireland on only six occasions during our EU membership during which over 4,000 Directives have been transposed.

Returning to the scrutiny of draft SIs by the Committee I am aware that you met with the Minister for the Environment, Climate and Communications and Minister for Transport, Eamon Ryan, on 24th June last where these matters were discussed.

Our meeting today is also timely as I met recently with the Attorney General, Rossa Fanning, to discuss these very matters. My remarks today will be guided by these discussions and the advice provided by the Attorney General. The key points of the AG's advice are:

- It is important that information notes on new EU Directives are provided in the first instance by the relevant Department concerned. I understand that the Committee is starting to review the 24 Directives which were published in 2023 and which will come into effect, on different dates, from December of this year onwards. Indeed, most of these will fall to be transposed in 2025 and 2026. While some of these Directives are quite substantive, a number are more technical in nature. These information notes should assist the Committee in prioritising its work on these 2023 Directives over the coming period.
- There is no difficulty with Departments providing the Committee with the initial draft instructions for regulations to transpose EU Directives, as sent by them to the Office of Parliamentary Counsel. These should represent the substantive if not quite settled policy of the Department on particular Directives. These can then be examined by the Committee, may also be

published by the Committee, and also forwarded to the relevant Joint Sectoral Committee for detailed scrutiny, should this Committee so decide.

- You will understand that subsequent drafts of such regulations exchanged between the OPC and individual Departments represent a form of legal advice and are therefore subject to legal professional privilege in a manner similar to a legal opinion prepared and given by the Attorney General or the Office to the Government or a Minister.
- Unless and until a Minister makes the regulations, every iteration of the draft regulations (stamped or unstamped) is subject to legal professional privilege and cannot be provided to the Committee. Only the Regulations when made by a Minister can be provided to the Committee, apart from the initial draft prepared by the Department, as I stated earlier.

I am aware that this may not be what the Committee wanted to hear but I suggest, some one year or more into the life of the Committee, that it's important that there is clarity and legal certainty around what may, or may not, be provided by Departments to assist the Committee in its important work in scrutinising the transposition of EU Directives.

We now have the settled advice of the Attorney General on the matter. I will set out this advice in writing to the Chair of this Committee.

Also following our meeting today, I will write to Ministers to advise them of the AG's advice and to impress on them the need for early engagement with the Committee in regard to their respective Directives. We would encourage Ministers and the Departments, where possible, to provide the Committee with

the initial draft SI, where possible, six months before the deadline to provide the Committee with sufficient time to scrutinise this.

I'll turn briefly to the additional powers of the Committee to oversee infringement actions against Ireland, in particular where financial penalties may be applied.

While not in any way meaning to diminish the importance of the issue, I should recall that there are currently only 46 infringement actions against Ireland, an all-time record low for this country. Compared to other Member States Ireland is performing well, a number of others have over 100 live cases, for example.

Last week I chaired a meeting of the Interdepartmental Committee on EU Engagement. At this meeting, we went through the infringement cases currently against Ireland. Of those 46 cases, some 15 are awaiting closure – Departments have transposed the 15 Directives in question, in many cases more than one year ago, and we are simply waiting for the Commission to formally close these cases. I have tasked the relevant Ministers and their Departments to engage urgently with the relevant Commission services to seek early close of these cases. Accordingly, I expect that over the coming months the number of live infringement cases will continue to fall.

In conclusion, I should like to thank the Chair, Senator Conway, for the opportunity of coming here today to clarify to the Committee the position with regard to the provision of draft Statutory Instruments. Now that this has been clearly set out, I shall encourage my Ministerial colleagues and their Departments to work in a timely manner with the Committee so that the Houses

of the Oireachtas can continue to play an important role in overseeing the transposition of EU Directives across Government.

Thank you.