THE HIGH COURT

JUDICIAL REVIEW

Record No. 2020/76 JR

BETWEEN:

FRIENDS OF THE IRISH ENVIRONMENT CLG

Applicant

-and-

MINISTER FOR COMMUNICATIONS, CLIMATE ACTION AND ENVIRONMENT IRELAND AND THE ATTORNEY GENERAL

Respondents

SHANNON LNG LIMITED

Notice Party

OUTLINE OF RESPONDENTS' POSITION ON THE POINT OF LAW RAISED AT THE HEARING OF 22 JANUARY 2021

---

1. At the hearing of 22 January 2021 on the domestic law reliefs sought by the Applicant in this matter, the Court raised the question whether the Government could be said to constitute a "*relevant body*" within the meaning of the Climate Action and Low Carbon Development Act 2015 (the "**2015 Act**").

2. Counsel for the Respondents responded to that question at the hearing. The Applicant wished to have further time to consider the matter and, upon the Applicant's request,

it was directed that the State should file a short written outline of its position on the matter. The Applicant was given liberty to file written submissions on this discrete point of law thereafter, and the Respondents have liberty to file replying submissions.

3. For the avoidance of doubt, the Respondents maintain in full their position on the other matters addressed in the pleadings and submissions of the Respondents on the domestic law reliefs sought by the Applicant, and this outline is submitted without prejudice to same. In particular, as averred at §§28 - 36 of the Second Affidavit of Mr. Smith and in the submissions of the Respondents, it is emphasised that climate and environmental considerations were considered by the State in approving the inclusion of Shannon LNG in the Regional List at the Regional Group meeting of 4 October 2019. Furthermore, as the Dáil statement of the Minister of 3 October 2019, the Speaking Points and the ongoing review into Ireland's energy supply referenced at §36 of Mr. Smith's Second Affidavit indicate, climate issues will form important considerations in Irish energy policy decisions going forward, and Ireland will only support future applications for EU Connecting Europe Facility Funding if the projects continue to remain in line with national and EU climate policy objectives.

4. In brief, as indicated by Counsel for the Respondents at the hearing, the legal position on the question raised appears to the Respondents to be as follows.

5. Section 15 of the 2015 Act applies to "*relevant bodies*", which is defined by Section 15(6) as a "*prescribed body*" and a "*public body*" under the Freedom of Information Act 2014 (the "**2014 Act**").

6. "*Prescribed body*" is defined by Section 2 of the 2014 Act as "*a body or entity declared to be such by the Minister by order pursuant to section 7*". The Government has not been declared to constitute a "*prescribed body*" by Ministerial order pursuant to section 7 of the 2014 Act.

7. "*Public body*" is defined by Section 2 of the 2014 Act as "*a body or entity referred to in section 6(1)*". Section 6(1) of the 2015 Act provides,

> *"6. (1) Subject to this section, each of the following shall be a public body for the purposes of this Act:*
>
> *(a) a Department of State;*

(b) an entity established by or under any enactment (other than the Companies Acts);

(c) any other entity established (other than under the Companies Acts) or appointed by the Government or a Minister of the Government, including an entity established (other than under the Companies Acts) by a Minister of the Government under any scheme;

(d) a company (within the meaning of the Companies Acts) a majority of the shares in which are held by or on behalf of a Minister of the Government;

(e) a subsidiary (within the meaning of the Companies Acts) of a company to which paragraph (d) relates;

(f) an entity (other than a subsidiary to which paragraph (e) relates) that is directly or indirectly controlled by an entity to which paragraph (b), (c), (d) or (e) relates;

(g) a higher education institution in receipt of public funding;

(h) notwithstanding the repeal of the Act of 1997 by section 5 , and subject to this Act, any entity that was a public body (including bodies or elements of bodies prescribed as such) within the meaning of the Act of 1997 on the enactment of this Act."

8. The Government is not listed as a "*public body*" within the meaning of Section 6 of the 2014 Act. Section 28 of the 2014 Act includes meetings of the Government as exempt records for the purpose of the Act, subject to certain very limited exceptions, such as where a record constitutes a record by which a Government decision is published to the general public. The fact that the Government does not constitute a "*prescribed body*" or "*public body*" within the meaning of the 2014 Act would appear to be consistent with the principle of cabinet confidentiality contained in Article 28.4.3° of the Constitution.

9. Further, as noted at the hearing of 22 January 2021, the 2015 Act distinguishes between the "Government" and the "Minister" or "Department". This distinction is made, for instance, in Sections 3 - 7 inclusive of the 2015 Act (for instance, Section 7

which obliges the Minister to prepare and submit to the Government a national climate change adaptation framework). The distinction is also made in the 2014 Act.

10. It would appear that the act of an Irish official representing the State at the meeting approving the inclusion of Shannon LNG on the regional list as provided in Article 3(3) of the TEN-E Regulation (which was, as averred by Mr. Smith in his Second Affidavit, attended by Mr. O Conaill, Energy attaché to the Permanent Representation of Ireland to the European Union, i.e., an official of the Department of Foreign Affairs) constitutes in the context of our obligations to the EU, in constitutional terms notwithstanding that there was no Government decision, an exercise of the executive power of the State in the conduct of external relations.

11. It would appear that such act should, constitutionally, be considered to be exercised by that official acting on the authority of the Government. Pursuant to Article 28.2 of the Constitution, the executive power of the State "*shall, subject to the provisions of this Constitution, be exercised by or on the authority of the Government*". Pursuant to Article 29.4.1° of the Constitution, the "*executive power of the State in or in connection with its external relations shall in accordance with Article 28 of this Constitution be exercised by or on the authority of the Government*". The Government constitutes the "*sole organ of the State in international affairs*": per Walsh J in ***Crotty v An Taoiseach*** [1987] IR 713, at p. 777; see similarly Griffin J in ***Boland v An Taoiseach*** [1974] IR 338 at p. 370; Denham CJ in ***Pringle v Government of Ireland*** [2013] 3 IR 1 at §17.

12. It would appear that the provisions of the Constitution empowering the State to ratify the Treaty of Lisbon (Article 29.4.4°), and providing that no provision of the Constitution invalidates measures necessitated by obligations of EU law, does not change the constitutional characterisation of the approval of the Irish official given at the Regional Group meeting of 4 October 2019 as the exercise of the executive power of the State in its external relations. See the observations of Walsh J in ***Crotty v An Taoiseach*** [1987] IR 713 at 783, observing that the reference to "*league of nations*" in Article 29.4.2° must be read as including the (then) European Economic Community. See, similarly, the observations of O'Donnell J in ***Pringle v Government of Ireland*** [2013] 3 IR 1 at 102–103, §6.

13. Accordingly, it would appear that the Government does not as a matter of law constitute a "*relevant body*" within the meaning of Section 15 of the 2015 Act.

14. It must be emphasised however that it is entirely accepted that the Minister and the Department, acting as such, constitute relevant bodies under Section 15 of the 2015 Act and are fully bound by its terms.

SUZANNE KINGSTON SC

PATRICK MCCANN SC

6 FEBRUARY 2021

THE HIGH COURT

JUDICIAL REVIEW

2020 No 76 JR

Between:

FRIENDS OF THE IRISH ENVIRONMENT CLG

Applicant

-and-

THE MINISTER FOR COMMUNICATIONS, CLIMATE ACTION AND THE ENVIRONMENT, IRELAND and THE ATTORNEY GENERAL

Respondents

-and-

SHANNON LNG CLG

Notice Party

OUTLINE OF APPLICANT'S POSITION ON THE POINT OF LAW RAISED AT THE HEARING OF 22ND JANUARY 2021

Introduction

1. The Court has asked the parties to address a discrete issue that arose at the hearing on 22nd January 2020.

2. The Respondent has characterised the question as whether the Government "*could be said to constitute a 'relevant body' within the meaning of the Climate Action and Low Carbon Development Act 2015".* In the Applicant's view the correct characterisation of the question is whether the Government is obliged to have regard to the National Mitigation Plan, in particular in the context of the decision the subject of these proceedings.

3. It is the Applicant's case that, on either formulation, the 2015 Act applies.

Preliminary Observations

4. The Respondent's submissions of 6th February 2020 (furnished on 9th February 2020) are notably tentative. The phrase "*would appear*" prefaces each of the substantive paragraphs in its submissions (§§10-13). It is unclear what the Respondent means by this phrase, or why the Respondent has not provided a definitive position.

5. This problem is compounded by the phrase (§14) *"It must be emphasised that it is entirely accepted that the Minister and the Department, acting as such, constitute relevant bodies*" for the purposes of the 2015 Act. It is unclear what the Respondent means by this caveat. It is not clear when the Minister or the Department are not acting as "such".

The Plan

6. At the outset, it is worth looking at what the 2015 Act says about "the Plan".

7. The Long Title to the Act rehearses that it is *"An Act to provide for the approval of plans by the Government in relation to climate change for the purpose of pursuing the transition to a low carbon, climate resilient and environmentally sustainable economy".*

8. By section 3(1), "*For the purpose of enabling the State to pursue, and achieve, the transition to a low carbon, climate resilient and environmentally sustainable economy by the end of the year 2050 (in this Act referred to as the 'national transition objective')*" the relevant Minister shall make and submit to the Government for approval both a "*national mitigation plan*" and a "*national adaptation framework*".

9. Section 3(2) sets out how the Government is to proceed "*When considering a plan .. for approval*" .

10. Thus it is the Minister who makes the plan and submits it to the Government; and the Government which approves it. Unless the "approval" is to be regarded as merely a rubber-stamping exercise designed for PR purposes, it is submitted that the "approval" by the Government cannot be devoid of consequences for the Government.

11. Section 4(1) envisages that the Minister "shall" make and submit the original Plan within 18 months of the commencement of the Act (18th January 2016); and "shall" make and submit further plans "*not less than once in every period of 5 years*".

12. Section 4(2) identifies a number of matters that the Plan must "*specify*" and

also matters that the Plan must "*take into account*". Crucially, among the matters which must be specified is "*the manner in which it is proposed to achieve the national transition objective*". To construe the legislation as meaning that the Government which approves the plan need not "have regard " to the plan (including the manner in which it is proposed to achieve the national transition objective) once approved is absurd.

13. This is all the more so where the purpose of making and submitting the Plan for approval is "*enabling the State to pursue, and achieve, the transition to a low carbon, climate resilient and environmentally sustainable economy by the end of the year 2050".*

14. By section 4(4) – "*The Government may approve or approve subject to modification a national mitigation plan submitted to them under this section."* There is no provision for the Government to reject a plan in its entirety.

15. It is notable that in section 4(4) , and also section 4(6), the Government is described as "them" rather than "it". This supports the idea that the Government is seen in the 2015 Act as its members; see also section 4(12) below.

16. By section 4(5), the Minister may make and submit to the Government for approval a plan (in the Act also referred to as a "national mitigation plan") varying, revising or replacing an approved national mitigation plan.

17. By section 4(6), "*The Government may vary or revise a national mitigation plan approved by them under this section*." There is no provision for the Government to simply ignore a plan. If the Government wishes to vary or revise the Plan, it must do so under section 4(6). This in turn would require the Government to take account of various matters specified in section 4(7).

18. By section 4(10), "*A national mitigation plan shall be laid before each House of the Oireachtas as soon as may be after it is approved by the Government.*" It is not entirely clear to the Applicant what the purpose or effect of such "laying" is; but it appears at least to impart a degree of formality to the adoption of the Plan.

19. By section 4(11), "*A national mitigation plan shall not be implemented unless it has been approved by the Government in accordance with this section*." This equates approval with implementation.

Section 4(12) of the 2015 Act

20. By section 4(12), "*A Minister of the Government shall, in the performance of his or her functions, have regard to a national mitigation plan approved by the Government under this section*." This is clearly of great significance in

the context of the current debate. There is no limitation on the type of "functions" of a "Minister of the Government" covered by this provision, which is expressed in mandatory terms. It is submitted that this must include the function of the Minister as a member of the Government.

21. By schedule 1 of the Interpretation Act 2005, " '*Minister of the Government' means a member of the Government having charge of a Department of State*."

22. Thus it is clear that the duty on section 4(12) is imposed on those who are members of the Government.

23. it is submitted that the obligation under section 4(12) (and section 15) cannot be construed as applying to a Minister up to the door of the Cabinet room, ceasing to apply at the threshold and then re-attaching to the Minister on exiting the room.

Constitutional provisions

24. For the sake of completeness, certain provisions of the Constitution are addressed below.

25. By Article 28.2.1 of the Constitution "*The Government shall consist of not less than seven and not more than fifteen members who shall be appointed by the President".*

26. By Article 28.2.2, "*The executive power of the State shall, subject to the provisions of this Constitution, be exercised by or on the authority of the Government."*

27. By Article 28.4.2 "*The Government shall meet and act as a collective authority, and shall be collectively responsible for the Departments of State administered by the members of the Government.*"

28. In *Attorney General v Hamilton* [1993] 2 IR 250 at p266 Finlay CJ observed

> *"Article 28, s. 4, sub-ss. 1 and 2 of the Constitution impose upon the members of the Government separate though clearly related obligations, and these are:*
> *(1) They must meet as a collective authority.*
> *(2) They must act as a collective authority.*
> *(3) They must be collectively responsible for all the Departments of State and not merely the one which each of them administers.*
> *(4) They have as a Government a responsibility to Dáil Éireann*."

For present purposes, the important point is that these obligations are said to be imposed on "*the members of the Government*".

29. By Article 28.12 - "*The following matters shall be regulated in accordance*

with law, namely, the organization of, and distribution of business amongst, Departments of State, the designation of members of the Government to be the Ministers in charge of the said Departments, the discharge of the functions of the office of a member of the Government during his temporary absence or incapacity, and the remuneration of the members of the Government."

30. Kelly, The Irish Constitution (5th Ed, 2018) at [5.1.05] under the heading "*Legal character of 'the Government' – the 'executive organ of the State'*" observes (footnotes omitted) - "*The precise legal dimensions of the constitutional organ called 'the Government' have not yet been judicially measured though in McLoughlin v Minister for Social Welfare Kingsmill Moore J referred briefly to the Government as 'the executive organ of the State' and noted that under the Constitution the Government was set apart as an entity of its own, separate and distinct from the State, so that a distinction had to be drawn between the civil service of the Government and the civil service of the State, a distinction which did not exist in Saorstát Éireann. Pending an authoritative judicial survey, some observations on the apparent character of the Government may be offered*."

31. The first of these observations at [5.1.06] is headed "*Legal personality and capacity to sue and be sued*" and reads as follows (footnotes omitted) - "*First, it appears to have a less complete legal personality than its individual members, as Ministers, possess. By s 2(1) of the Ministers and Secretaries Act 1924, each Minister who is head of a department (the original departments are enumerated in the preceding section: the titles and functions have been continually altered by later legislation) is a corporation sole, with perpetual succession, and with power to sue and be sued, and to own land for his department's purposes. No such well-rounded persona is available to the Government itself. It has a seal to authenticate its acts and is capable of holding property. On the other hand, its capacity to sue or to be sued is problematical. Its non-appearance as plaintiff may be explained by the existence of the Attorney General's function as representative of the State and of the public interest. In the majority of actions substantially aimed at the Government as such – Boland v An Taoiseach*, *Ó Monacháin v An Taoiseach*, *Crotty v An Taoiseach*, *Duggan v An Taoiseach*, *McGimpsey v Ireland*, *Slattery v An Taoiseach*, *McKenna v An Taoiseach (No 2) and Morelli v An Taoiseach the defendants named in the proceedings were the Taoiseach, the Tánaiste and all the other members of the Government (named, however, as 'Ministers for…'). That said, there is a growing number of cases in which the Government has been sued as such and in Dudley v An Taoiseach Geoghegan J said: 'As a Minister can be judicially reviewed in the exercise of his powers and functions, there must, I think, be an arguable case that the Government can be judicially reviewed in*

the circumstances of this particular case.' "

32. An analogy may be drawn with the principle identified in *Kelly The Irish Constitution* (5th ed. pp. 508-509) that the Government is prohibited from amending, suspending or disapplying legislation. As identified by the learned authors it is the duty of the Government to ensure that the laws passed by the Oireachtas are implemented and enforced.

Section 15 of 2015 Act

33. Regarding section 15, and its interaction with the 2014 Act, this identifies a Department of State as a public body.

34. By section 1 of the Ministers and Secretaries Act 1924, the Minister is the head of the relevant Department of State – "*There shall be established in Saorstát Eireann*[1] *the several Departments of State specified and named in the eleven following sub-paragraphs, amongst which the administration and business of the public services in Saorstát Eireann shall be distributed as in the said sub-paragraphs is particularly mentioned, and each of which said Departments and the powers, duties and functions thereof shall be assigned to and administered by the Minister hereinafter named as head thereof…*"

35. This is re-iterated in section 2(1) – "*Each of the Ministers, heads of the respective Departments of State mentioned in Section 1 of this Act, shall be a corporation sole under his style or name aforesaid (which may be lawfully expressed with equal validity and effect whether in the Irish Language or in its English equivalent as set out in the preceding section), and shall have perpetual succession and an official seal (which shall be officially and judicially noticed), and may sue and (~~subject to the fiat of the Attorney-General having been in each case first granted)~~*[2] *be sued under his style or name aforesaid, and may acquire, hold and dispose of land for the purposes of the functions, powers or duties of the Department of State of which he is head or of any branch thereof.*"

36. Thus even without section 4(12), the Ministers who make up the Government and thus the Government are subject to section 15.

37. At para 8 of the State submissions of 6th February 202, the point is made that s.28 of the 2014 Act includes meetings of the Government as "exempt records" for the purposes of the 2014 Act. However, in response it is

[1] Now to be construed and have effect as meaning "Ireland" – see section 2 of the Constitution (Consequential Provisions) Act, 1937

[2] The requirement to obtain the Attorney General's *fiat* was found to be invalid having regard to the provisions of the Constitution in *Macauley v Minister for Posts & Telegraphs* [1966] IR 345

submitted that including certain documents in the category of "exempt records" does not in fact establish that the Government is not a "public body". On the contrary, it supports the idea that the Government is within the scope of the 2014 Act, and that a specific exemption had to be created for certain records otherwise within the scope of the Act.

Role of the official of the Department of Foreign Affairs

38. The Respondent argues that "it would appear" that because Article 28.2, when read with Article 29.4.1 of the Constitution designates the Government as the sole organ of the State in the conduct of external relations, that the act of the official representing the State at the meeting approving the inclusion of Shannon LNG on the PCI list was an act of the Government.

39. However, it is candidly acknowledges that there was no Government decision to recommend inclusion of Shannon LNG in the PCI list.

40. It does not, however, appear to be suggested that it was up to this official to decide whether to lobby for the inclusion of the Shannon LNG plant on the PCI list; or to lobby for its re-inclusion following the meeting of June 2019; or not to exercise the veto.

41. The Respondent's submissions regarding *Crotty v An Taoiseach* [1987] IESC 4 et al. appear to lead to the conclusion only that the Respondent's position is now that the decision of the State to support the inclusion of Shannon LNG in the PCI list *should* have been a decision of the Government.

42. In the Applicant's respectful submission the evidence before the Court indicates that the officials were acting at the behest of the Minister and/or his Department - both of which are obliged to have regard to the National Mitigation Plan.

43. There is, as previously rehearsed, no evidence before the Court that they did.

Conclusion

44. At the risk of repetition, it is submitted that the obligation under section 4(12) (and section 15) cannot be construed as applying to a Minister up to the door of the Cabinet room, ceasing to apply at the threshold and then re-attaching to the Minister on exiting the room.

John Kenny
James Devlin SC
5th March 2021
Word count 2,648

THE HIGH COURT

JUDICIAL REVIEW

Record No. 2020/76 JR

BETWEEN:

FRIENDS OF THE IRISH ENVIRONMENT CLG

Applicant

-and-

MINISTER FOR COMMUNICATIONS, CLIMATE ACTION AND ENVIRONMENT IRELAND AND THE ATTORNEY GENERAL

Respondents

SHANNON LNG LIMITED

Notice Party

REPLYING SUBMISSIONS OF THE RESPONDENTS ON THE POINT OF LAW RAISED AT THE HEARING OF 22 JANUARY 2021

---

1. The present submissions respond to the submissions of the Applicant dated 5 March 2021, replying to the Outline of the Respondents' Position concerning the question whether the Government could be said to constitute a "*relevant body*" within the meaning of the Climate Action and Low Carbon Development Act 2015 (the "**2015 Act**"), as raised by the Court at the hearing of 22 January 2021.

2. The Respondents maintain the position set out in their prior submissions of 6 February 2021 which it is submitted is the correct position as a matter of law. Further, as indicated there, the Respondents maintain in full their position on the other matters addressed in the pleadings and submissions of the Respondents on the domestic law reliefs sought by the Applicant, and this outline is submitted without prejudice to

same. In particular, as averred at §§28 - 36 of the Second Affidavit of Mr. Smith and in the submissions of the Respondents, it is emphasised that climate and environmental considerations were considered by the State in approving the inclusion of Shannon LNG in the Regional List at the Regional Group meeting of 4 October 2019. Furthermore, as the Dáil statement of the Minister of 3 October 2019, the Speaking Points and the ongoing review into Ireland's energy supply referenced at §36 of Mr. Smith's Second Affidavit indicate, climate issues will form important considerations in Irish energy policy decisions going forward, and Ireland will only support future applications for EU Connecting Europe Facility Funding if the projects continue to remain in line with national and EU climate policy objectives.

3. Without prejudice to the foregoing, the Applicant's Submissions appear principally to make the case that, as a matter of statutory construction:

    a. The relevant question is not whether the Government is a "*relevant body*" within the meaning of the 2015 Act, but rather "*whether the Government is obliged to have regard to the National Mitigation Plan*" (§2);

    b. Approval by the Government of the National Mitigation Plan "*cannot be devoid of consequences for the Government*" (§10) and there is no provision in Section 4 of the 2015 Act for the Government to "*simply ignore a plan*" (§17);

    c. Section 4(12) provides that a "*Minister of the Government*" shall have regard to a mitigation plan, which "*must include the function of the Minister as a member of the Government*" (§20);

    d. The obligation under Section 4(12) and Section 15 "*cannot be construed as applying to a Minister up to the door of the Cabinet room, ceasing to apply at the threshold and then re-attaching to the Minister on exiting the room*" (§§23 and 44).

4. With respect, these arguments do not appear to the Respondents to address the core of the issue raised by the Court which was, accepting that the Minister is covered by the Section 15 obligation, whether that obligation could be said to extend to the Government.

5. There is no dispute that the Minister falls within the scope of Section 15 of the 2015 Act. This has at all times been accepted and the Respondents' Outline of Position of

February 2021 re-confirmed that it "*is entirely accepted that the Minister and the Department, acting as such, constitute relevant bodies under Section 15 of the 2015 Act and are fully bound by its terms*".

6. The Applicant has previously stated its case to be grounded on Section 15 of the 2015 Act (see its Third Legal Submissions, undated, at §8: "*It is the Applicant's case that the "approval by Ireland is a function to which section 15 of the [2015 Act] applies*"). While its March 2021 Submissions now principally rely on Section 4(12) of the 2015 Act, this does not make a difference to the issue presently under consideration, as Section 4(12) refers to the functions performed by a Minister, not the Government as such.

7. As set out in the Respondents' Outline of Position, the Government does not appear to be listed as a relevant body under Section 15 of the 2015 Act or, indeed, under Section 4(12) of the Act.

8. The Applicant's Submissions essentially seek to conflate the decisions of the Minister and the Government. For instance, §36 argues simply that "… *the Ministers who make up the Government* ***and thus the Government*** *are subject to Section 15*" (emphasis added).

9. This does not appear to be consistent with the distinction made in between the "Government" and the "Minister" in the 2015 Act, as previously set out in the Respondents' Outline of Position.

10. Furthermore, it overlooks the position under the Constitution, as also set out in the Respondents' Outline of Position, that the act of an Irish official representing the State at the meeting approving the inclusion of Shannon LNG on the regional list as provided in Article 3(3) of the TEN-E constitutes in the context of our obligations to the EU, in constitutional terms an exercise of the executive power of the State in the conduct of external relations, notwithstanding that there was no Government decision. This is therefore not a case concerning any issue arising at the "*door of the Cabinet room*", but rather the constitutional characterisation of the acts of Irish officials representing the State at the said meeting.

11. The Applicant does not raise any argument of substance in relation to this constitutional characterisation. The reliance on ***Attorney General v Hamilton*** [1993]

2 IR 250 (Applicant's Submissions, at §28) is not understood. It is not in dispute that members of the Government act as a collective authority and are collectively responsible for Departments of State.

12. It is similarly unclear how the extensive citation of ***Kelly*** (Applicant's Submissions, at §§30-32) supports its case. It has never been contended that the Approval Decision amounts to the Government "*amending, suspending or disapplying legislation*" (Applicant's Submissions, §32). Rather the question at issue is what the relevant legislation means, properly interpreted.

13. Contrary to what the Applicant appears to suggest (Applicant's Submissions §§38-42), there is no requirement for every position adopted by Irish officials representing the State in EU meetings to be the subject of a Government decision, nor does the Applicant cite any authority supporting that position. As stated in the Respondents' Outline of Position, such position should, constitutionally, be considered to be exercised by that official acting on the authority of the Government.

14. Accordingly, the Respondents maintain their position that the Government does not as a matter of law constitute a "*relevant body*" within the meaning of Section 15 of the 2015 Act.

SUZANNE KINGSTON SC

PATRICK MCCANN SC

19 MARCH 2021