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30-09-2013 - Performance Audit: Enforcement Action by MEPA within the Outside Development Zone

The Auditor General reported that recent efforts to strengthen MEPA's enforcement function within the ODZ (Outside Development Zone) demonstrate that this important role is still in the process of evolution. The limited availability of land and the increasing demands for a better environment render the Authority's enforcement role critical. The MEPA Reform of 2010 can be seen as the most recent effort to address enforcement related issues. However, various factors prevented the Authority from fully implementing the polluter pays principle or adopting a zero tolerance approach regarding environmental and planning infringements within this zone, advocated therein.

The Enforcement Directorate, established in 2011, inherited an enforcement function characterised by a backlog of cases, including 2,065 outstanding Executable Enforcement Notices. Moreover, administrative processes were prolonged and delayed the conclusion of cases. Other factors, as indicated below, also inhibited the full attainment of the Reform objectives outlined above.

The enforcement function was not supported by documented strategic and operational policies. This constrained the Authority to react to prevailing circumstances rather than proactively target areas posing the highest planning and environmental risks. Consequently, these circumstances impinged on case processing consistency and efficiency.

Over a number of years, the enforcement function lacked the adequate level of resources and administrative capacity. Resource deployment priority was generally allocated to MEPA's other functions, such as its Planning arm. The main justification being that the latter function was obliged to fulfill development Planning Application processing duration targets.

Only a proportion of the required funds were made available for Direct Action (DA) initiatives. In many cases, this prohibited MEPA from taking the necessary action to remove irregularities itself, at the contraveners' expense. In addition, the Authority is still to recoup around 84 per cent of the invoiced expenses, with respect to DAs taken between 2006 and 2012 within the ODZ. This amounted to €438,329 up to March 2013.

The Enforcement Directorate still lacks the support of a comprehensive Information Technology (IT) infrastructure. Such a situation hinders operational throughput, prohibits the formal application of risk analysis in enforcement work, and does not enable the maintenance of robust audit trails. IT related concerns have also weakened management control over the enforcement function.

MEPA is sustaining its efforts to encourage contraveners to self-regulate their own position in cases of breaches of environmental and planning legislation. Such an initiative, as of 24 November 2012, has been supplemented with the introduction of Daily Fines, up to a maximum of €50,000 when the Authority's direction is not heeded and irregularities prevail. These initiatives constitute a paradigm shift from historical practices. The long-term success of these initiatives is, however, dependant on the Enforcement function being supported by the appropriate organisational structures and the internal control framework.

The Report puts forth a number of recommendations based on the critical issues identified and other audit findings.

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