

Annex F5: Corporate Enforcement Authority Declination (1 May 2025)

Source

Letter from Marian Lynch, Civil Assessment Unit, CEA, File Ref 100/13/05/3957/1 E. Dated 1 May 2025.

Context

On 24 April 2025, a formal complaint was filed with the Corporate Enforcement Authority regarding a potential conflict of interest involving daa CEO Kenny Jacobs, who holds shares in airlines operating from Dublin Airport while making operational decisions (flight path design) that benefit those airlines at the expense of regulatory compliance and community welfare.

CEA's Declination

Key points from the CEA response:

- CEA deals with suspected breaches of company law
- A director acting under a conflict of interest might represent a breach of fiduciary duties
- However, under Section 228(3) of the Companies Act 2014, "the proper plaintiff to enforce such duties is the company, since it is to the company that such duties are owed"
- Fiduciary duties under Section 228 are civil in nature with no company law offence arising
- "The issue the subject of your correspondence does not fall within the remit of the CEA and as such we have no role to play in this matter."

Supplementary Submission (30 April 2025)

Following the daa Chair's dismissive response (29 April 2025), a supplementary letter was sent to CEA arguing that the Chair's position amounted to "a public repudiation of the governance framework underpinning fiduciary responsibility in Ireland." The CEA did not respond further.

Letter to Attorney General (2 May 2025)

The CEA declination prompted a letter to the Attorney General posing four legal questions about the enforcement of director duties in State-owned companies. The letter noted: "The current legal impasse means that a board may refuse to act, a regulator may refuse to investigate, and the public, despite having both standing and evidence, is left without remedy."

No response was received from the Attorney General.

Aarhus Relevance

This demonstrates another closed loop in domestic remedies: the company's directors refuse to acknowledge the breach, the enforcement body says only the company can enforce against its own directors, and the public has no standing to compel either. For a State-owned company operating critical national infrastructure, this represents a systemic access to justice failure.