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SCOOP

Legal challenge to EU renewable energy policy

Windfarm victims lodge recourse before EU Court of Justice

The European Platform Against Windfarms (EPAW) regroup 596 associations of actual and potential victims of windfarms from 24 countries. They have just initiated proceedings at the **General Court** in Luxemburg, which is the part of the **EU Court of Justice** from whence people can seek redress against EU institutions under certain conditions. In this occurrence, EPAW

represents to the Court that the extension of the renewable energy programme of the **European Commission** (“Commission”) violates the Aarhus Convention on a number of counts, and should be annulled.

The **Aarhus Convention** ("Convention") has been approved by the Council Decision 2005/370/EC of 17 February 2005: it is therefore enforceable in the EU. It guarantees **access to information, public participation in decision-making and access to justice in environmental matters** (1). Given the considerable effect on the environment of the construction of thousands of windfarms across Europe, the Convention applies to any plan or programme or extension thereof that paves the way for such construction.

In EPAW’s **Application to the General Court of the European Union**, we read: “The Applicant requests pursuant to Article 264 TFEU the Honourable Court to declare the following concerned acts null and void: Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions "**Renewable Energy: a major player in the European energy market**" **COM(2012)271**, etc.” (2). This Application is in the public domain, published as it is by the United Nations Economic Commission for Europe (UNECE) as additional information for a related case about the Scottish renewable energy programme brought by the Avich and Kilchrenan Community Council to the Aarhus Convention Compliance Committee (ACCC) (3).

COM(2012)271 above is, effectively, a **vast industrial programme** that will considerably affect the environment of the EU. As such, it had to be submitted to public participation. This wasn’t done in a transparent manner, in accordance with the Convention and the Community law which implements it. EPAW sought remedy with the Commission (4), to no avail; it has now

brought the case to the Court of Justice (2).

The NGO claims that the thousands of windfarm projects COM(2012)271 is calling for will have severe environmental consequences, ranging from severe depletion or obliteration of various bird and bat species already under threat in various member countries (5), to the destruction of natural carbon sinks (peat, trees, and other vegetation), to soil erosion, water contamination, forest fires, and deleterious effects on the health of people and animals (6). But these issues have been overlooked, because **the necessary environmental assessments were not completed at Member State level**, which is a breach of both the requirements of the Convention and Community law. In spite of this, and a ruling of non-compliance by the **United Nations Aarhus Convention Compliance Committee**, the EU is still refusing to abide by the law.

The planning process is also being criticised. “By and large,” notes EPAW’s Mark Duchamp, “planning authorities across the EU do not perform rigorous assessments of the impacts of windfarms: in fact, **they do little more than rubberstamping the promoters’ environmental impact statements**. In legal terms, they are failing to conduct planning in a transparent and fair framework. This disrespect for the law will have dire, irreversible consequences for the EU’s environment, people’s health and the economy.”

On the benefits claimed side, EPAW points out that no thorough independent study has been done by the Commission to estimate **how much CO2 will be saved** by COM(2012)271. Actually, the NGO published studies conducted by independent engineers, acting on their own and pro bono (7), which all conclude that little or no CO2 will be saved by any number of windfarms. “Wind energy is intermittent,” notes Duchamp, “it needs fossil fuel power stations to back it up. But while these are ramping up and down to

balance the uncontrollable variations of the wind, **they burn about twice as much fuel.**” This explains the rallying cry of windfarm opponents: **“windfarms are all pain and no gain.”**

Oblivious to the numerous complaints from the civil society, the Commission has been relying on the assertions from the wind industry, turning a blind eye to such essential factors as back-up, inefficiencies in the required transmission network, and the high cost of windpower which is **eroding the competitive edge of European industry.**

In short, the information provided to the public has been anything but transparent, argues the NGO. In the best of cases, the Commission has been parroting the words and figures of the wind industry without checking their accuracy, and rubberstamping without proper assessment and public participation. **Article 9 (1)** of the EU Aarhus Regulation 1367/2006 requires “early and effective opportunities for the public to participate during the preparation, modification or review of plans or programmes relating to the environment **when all options are still open.** In particular, where the Commission prepares a proposal for such a plan or programme which is submitted to other Community institutions or bodies for decision, it shall provide for public participation **at that preparatory stage**”. EPAW’s submission to the Court of Justice is that this has not been done. “It is high time that the Commission be held accountable for its lack of respect of the law,” concludes Mark.

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(1) - <http://www.unece.org/fileadmin/DAM/env/pp/acig.pdf>

(2) -

http://www.unece.org/fileadmin/DAM/env/pp/compliance/C2012-68/Communication_with_Communicant/frComm_AddInfo22Mar13/2_EPAW_to_CJEU_2013_final_APPLICATION.pdf

(3) - “Argyll grandmother takes UK and EU to the United Nations over plans to turn Scotland into windfarm 'hedgehog'.”

<http://www.independent.co.uk/news/uk/home-news/argyll-grandmother-takes-uk-and-eu-to-the-united-nations-over-plans-to-turn-scotland-into-windfarm-hedgehog-8399574.html>

(4) - EPAW’s request for an Internal Review:

<http://www.epaw.org/documents.php?lang=en&article=c5>

(5) - A bombshell from Spain:

<http://savetheeaglesinternational.org/releases/spanish-wind-farms-kill-6-to-18-million-birds-bats-a-year.html>

(6) - <http://epaw.org/documents.php?lang=en> see studies etc.
classified by subject in the right margin.

(7) - <http://epaw.org/documents.php?lang=en> click “the backup problem” in the right margin.

