



**To:** EU Commission, DG Environment, Directorate C1; Renewables and CCS policy  
**Attention:** Hans Van Steen, Head of Unit  
**Attachments:** (1) Request for information on Renewable Energy Strategy. (2) Reply from EU Commission in relation to Renewable Energy Strategy  
**Re:** Seeking redress - Forthcoming complaint to the EU Ombudsman in relation to the EU programme on renewable energy  
**Date:** 22 March 2012

Dear Sir,

**The European Platform Against Windfarms (EPAW)**, whose details have been noted in your Transparency Register, represents 523 federations and associations from 23 European countries.

EPAW intends to lodge a formal complaint against the EU Commission to the EU Ombudsman in relation to EU programme on renewable energy; see details below in relation to maladministration. As the EU Ombudsman's rules state, it is necessary to contact the EU institution concerned in order to seek redress. This therefore is the purpose of this letter. Furthermore, as the maladministration described below is systematic and involves sums of money running into € billions, EPAW also intends to lodge a formal complaint with OLAF, the EU anti-fraud office. Finally, the Charter of Fundamental Rights (Lisbon Treaty); Title V (Citizen's Rights) Article 41 states:

- Every person has the right to have the Union make good any damage caused by its institutions or by its servants in the performance of their duties, in accordance with the general principles common to the laws of the Member States.

There is established jurisprudence in this area<sup>1</sup>, which is currently being investigated by members of EPAW.

#### **Substance of the Maladministration: (1) Aarhus Convention**

The United Nations Economic Commission for Europe's Aarhus Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters was ratified by the EU in February 2005 and is a part Community legal order. As the Commission knows, it is part of a Communication ACCC/C/2010/54 (compliance investigation) at the Aarhus Convention Compliance Committee in relation to the renewable energy programme in Ireland. This relates to how:

- The EU had approved the State Aid (REFIT) for some 80% of the wind turbines erected to date;

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<sup>1</sup> [http://ec.europa.eu/eu\\_law/infringements/infringements\\_dommmages\\_en.htm](http://ec.europa.eu/eu_law/infringements/infringements_dommmages_en.htm)

- The EU had provided €110 million in direct funding for the electrical interconnector to Wales, whose sole function was to facilitate the expansion of more wind energy and;
- The EU had also failed to ensure that the Irish public were correctly informed with environmental information and provided with proper public participation in relation to the National Renewable Energy Action Plan (NREAP), which is part of the implementation of Directive 2009/28/EC.

The Compliance Committee meet on the 27<sup>th</sup> March 2012 to issue their draft findings and recommendations on this Communication<sup>2</sup>, while following their meeting in September 2011 the Compliance Committee sent a letter to the EU Commission<sup>3</sup> pointing out, on approval of the Convention, the EU declared that it would be responsible “for the performance of those obligations resulting from the Convention which are covered by Community law in force”. They therefore concluded the letter with:

- “Could you please explain why the Commission says that it is not responsible for the actions of the Member State in this case?”

Note: There was a failure to respond to the Compliance Committee with the information sought. Other failures which are now clearly obvious from the web page of the Communication<sup>4</sup> include:

- Ireland has failed to complete the mandatory Strategic Environmental Assessment for its renewable energy programme. The EU lied in writing on two separate occasions that Ireland was fully compliant with the Directive on Strategic Environmental Assessment (Directive 2001/42/EC) for this programme.
- The EU Commission was complicit in ensuring that the necessary Strategic Environmental Assessments required prior to adoption of the National Renewable Energy Action Plans (NREAP) were not completed in the 27 Member States, thereby bypassing a key element of public participation in decision making.
- The EU Commission approved further State Aid (REFIT II) in January 2012 for 4,000 MW of renewable energy in Ireland, on the basis that it could do so without regard to the Aarhus Convention. Note: Recital (90) of Directive 2009/28/EC requires the implementation of the Directive to reflect the provisions of the Directive. Furthermore, the EU Commission ignored the provisions of the Aarhus Convention when it approved the REFIT I State Aid in 2007.
- The information in relation to emissions savings found in Section 10 of the Jan 2012 progress reports on the National Renewable Energy Action Plans is

<sup>2</sup> See 7 (b): <http://www.unece.org/fileadmin/DAM/env/pp/compliance/CC-36/ece.mp.pp.c.1.2012.1.eng.pdf>

<sup>3</sup> [http://www.unece.org/fileadmin/DAM/env/pp/compliance/C2010-54/Correspondence%20with%20Party%20concerned/topartiesC54EU\\_afterDiscussion.pdf](http://www.unece.org/fileadmin/DAM/env/pp/compliance/C2010-54/Correspondence%20with%20Party%20concerned/topartiesC54EU_afterDiscussion.pdf)

<sup>4</sup> <http://www.unece.org/env/pp/compliance/Compliancecommittee/54TableEU.html>

false, while the EU Commission clearly see it as the obligation of the public, rather than their obligation, to evaluate the transparency of the environmental information.

Furthermore, the information in the EU's Intelligent Europe projects, GP Wind and WINDFACTS is false, in particular in relation to emission savings. The EU Commission has failed to address this issue even though it has been brought to their attention.

With regard to the recent public consultation on the renewable energy strategy<sup>5</sup>, as EPAW had serious concerns in relation to the manner in which the EU Commission is completing public participation in relation to renewable energy, it sent in the attached access for information request in relation to compliance of the renewable energy strategy with the Aarhus Convention. The Commission failed to reply within the statutory period, but finally responded, as attached, stating that this consultation would be conducted and evaluated on the basis of the Commission Communication Com (2002) 704: "Towards a reinforced culture of consultation and dialogue – General principles and minimum standards for consultation of interested parties by the Commission".

This is a document and a procedure, which does not comply with Article 7 of the Aarhus Convention. In addition, the EU Commission in their reply made it very clear in that as far as they were concerned, access to justice and Article 11 of Regulation 1367/2006 did not appear to be related to the public consultation in question, a further breach of the rights and obligations under the Aarhus Convention.

### **Substance of the Maladministration: (2) Failure to comply with rules for State Aid for Environmental Protection**

The latest guidelines on state aid for environmental protection are provided in Commission Notice 2008/C82/01 "Community Guidelines on State Aid for Environmental Protection". Section 5.2.1.4 on the Proportionality of the Aid is clear in that "the Member State should provide evidence that the aid is necessary, that the amount is kept to the minimum and that the selection process is proportional. Section 1.3.5 also states in relation to Proportionality of Aid: "Aid is considered to be proportional only if the same result could not be achieved with less aid. In particular, the aid amount must be limited to the minimum needed to achieve the environmental protection sought".

This is the overriding principle of EU Legislation, including that of environmental protection, called the Principle of Proportionality, which requires that the extent of the action must be in keeping with the aim pursued. When applying the general principle of proportionality, the European Court of Justice frequently states that the principle requires an act or measure to be "suitable" to achieve the aims pursued, or it rather concludes that a decision is disproportionate because it is "manifestly inappropriate in terms of the objective which the competent institution is seeking to pursue"<sup>6</sup>.

The documentation in relation to Communication ACCC/C/2010/54 reveals in relation to the Irish renewable energy programme:

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<sup>5</sup>[http://ec.europa.eu/energy/renewables/consultations/20120207\\_renewable\\_energy\\_strategy\\_en.htm](http://ec.europa.eu/energy/renewables/consultations/20120207_renewable_energy_strategy_en.htm)

<sup>6</sup> See for instance, along with many other European Court of Justice Judgements, Points 35 and 36 of: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:62006CJ0037:EN:HTML>

- No ranking system was ever prepared in relation to the different renewable technologies and their ability to meet the objectives of the renewable Directive. In other words the relative abilities to achieve greenhouse gas savings and the resulting cost basis was never assessed;
- No alternatives were ever considered. The focus was solely to obtain the maximum percentage of wind energy on the grid;
- No verification of emission savings with the wind energy installed to date has been completed;
- No estimation of greenhouse gas savings has been completed with regard to Ireland's National Renewable Energy Action Plan;
- No estimation of the emissions savings in relation to REFIT II was ever completed or required by the EU Commission for its approval.
- The funding mechanisms for the renewable energy programme (REFIT) are to ensure delivery of an EU obligation in relation to renewable energy and not part of a commitment to contribute to any quantifiable environmental target related to quantified carbon dioxide savings.

With regard to REFIT I, which has funded 1,384 MW of the 1,685 MW of wind energy on the Irish grid, in 2004 the Irish grid company Eirgrid produced a report documenting the induced inefficiencies which would occur on the grid due to the installation of increased levels of wind energy. This was ignored in the 2006 REFIT I application, in which the emission savings claimed were double that of the Eirgrid report, based on wind industry standard figures.

It is now clear from analysis of the current Eirgrid monitoring data, that their 2004 report if anything overstated what emission savings would occur. Therefore not only were the REFIT I claims out by a factor of about three, but if further wind turbines are installed on the Irish grid, no more emission savings will occur.

A key legally binding principle of environmental protection is the analysis of cost, benefits and consideration of alternatives. Yet when it comes to greenhouse gases there has been essentially a complete failure to properly fund and execute these vitally necessary, albeit complex, studies. We are in the dark about the external cost of greenhouse gases. To explain, the internal cost is what we pay directly, such as on our electricity bill, while the external cost does not appear as a direct charge to the consumer: it has a cost to society as a whole, such as through environmental degradation. Obviously external costs are an absolute key element of cost, benefit analysis and the resulting decision making.

The first EU Directive on renewable energy in 2001 (2001/77/EC), had as its principle objective the reduction of greenhouse gases to comply with the Kyoto Protocol. The EU Commission was required by the end of 2005 to prepare a report for the European Parliament and the Council which should:

- "Consider the progress made in reflecting the external costs of electricity produced from non-renewable energy sources and the impact of public support granted to electricity production".

This report couldn't be found on the internet or the EU's own document register. An access to information request under Regulation 1366/2006 has since confirmed that the EU Commission simply failed to complete this report and instead implemented an even larger renewable energy programme.

Ireland's renewable energy programme is simply a massively expensive project to install over four thousand wind turbines and to double the grid by an additional 5,000 km of high voltage lines. It is not a programme to provide environmental protection. Yet the huge costs involved, both financially and environmentally, are applied through the EU's own mechanisms for State Aid for Environmental Protection, without any data being available to support the environmental protection objective claimed.

The preliminary indication is that the same failures, in relation to complete lack of transparency with regard to State Aid for Environmental Protection to fund renewable energy programmes, has occurred in other Member States as well. Simply put, these State Aid funding programmes are not legitimate.

Please acknowledge receipt.

Sincerely,

Mark Duchamp  
Executive Director, EPAW  
[www.epaw.org](http://www.epaw.org)