

**To:** Patrick Wegerdt  
European Commission  
DG Environment  
Unit A.2 Compliance Promotion, governance & legal issues

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**Date:**

**RE:** Summary of individual requests under Directive 2003/4/EC as per your request of 22nd February 2010

The Aarhus Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters has not been ratified by the Irish State, the only one of the 27 Member States that has not done so. As Ireland was holding up the whole EU ratification process it came to a position in September 2007 that the EU had to draft a note setting down in writing certain explanations given verbally, such that Ireland will be obliged to respect the commitments arising from the Convention where they concern provisions falling within the competence of the Community. Nevertheless, this obligation has an impact solely on Community legal order.

There are essentially three 'pillars' to the Aarhus Convention and their relationship to EU and Irish Law can be summarised by:

- Access to Information on the Environment is enacted by Directive 2003/4/EC. In Ireland S.I. No. 133 of 2007 gives effect to this legislation. Note: This directive relates not only to access to information on request but requires information on the environment to be made available and disseminated to the public in order to achieve the widest possible systematic availability and dissemination.
- Public Participation in Decision-making is enacted by Directive 2003/35/EC. The implementation of this Directive is subject to ongoing legal challenges. Indeed the European Court of Justice (C-427-07) has found against the Irish State in a case taken by the European Commission over the implementation of this Directive.
- Access to Justice. While the EU has yet to finalise a Directive on Access to Justice, although measures are incorporated into Directive 2003/35/EC, it is clear that Ireland is non-compliant with these requirements. Infringement proceedings are currently on-going.

With regard to S.I. No. 133 of 2007 and the Guidance Notes issued by the Department of the Environment, Heritage and Local Government, the procedure required is outlined by the following steps:

- A request is made to the relevant Public Body, which has one month to reply to the request. The guidelines require that Public Bodies offer assistance to members of the public to formulate requests.

- After this period the Public Body is legally required to respond and offer the member of the public the right to an internal review.
- If the member of the public requests an internal review then there is a further month in which a more senior member in the public body has to respond to the information request.
- At the end of this internal review period a reply has to be made to the member of the public in which the option of an appeal to the Commissioner of Environmental Information has to be offered.
- The fee for an appeal to the Commissioner of Environmental Information is €150 and has to be lodged before an appeal can be accepted. There is no timeframe on the appeal but the Commissioner has the power to enter and seize documentation or initiate a High Court action.
- Note: The basic requirements for which public authorities must comply include:
  - Informing the public of their rights and providing information and guidance on exercising those rights; and
  - Making all reasonable efforts to maintain environmental information in a form that is readily reproducible and accessible.

The table overleaf is a summary of the Aarhus related experiences I have had over the last seven months. The ranking order corresponds roughly to the level of importance I attach them in terms of financial implications.

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<p>22<sup>nd</sup> September 2009: Department of Communications, Energy and Natural Resources (DCENR).</p>	<p>Strategic Environment Assessment for Renewable Energy Programme. Pricing basis for renewable tariffs, i.e. costs, benefits and alternatives. Technical details on 2006 Green Paper on Energy Policy.</p>	<p>Failure to reply with information on 22<sup>nd</sup> October, failure to follow procedures related to internal review. Repeated requests for information to DCENR made such as 20<sup>th</sup> November, 30<sup>th</sup> November and 3<sup>rd</sup> December.</p>	<p>Office of Commissioner of Environmental Information decided that there were grounds for appeal.</p> <p>Appeal process underway: CEI/09/0016</p>	<p>In October 2008 the Irish Government announced a target for renewable penetration of 40% in the electricity sector. The capital cost of the wind energy component is €30 billion. No Strategic Environmental Assessment according to Directive 2001/42/EC has been prepared or cost / benefit review of the tariffs announced.</p>
<p>19<sup>th</sup> November 2009: Attorney General / Minister for Communications,</p>	<p>What legal advice had been provided to those elements of the Administration that were clearly acting outside the legislative framework, i.e. the legal policy of the Administration for compliance with the</p>	<p>19<sup>th</sup> November: Attorney General's office reply that they do not provide legal advice to members of the public. 7<sup>th</sup> December reply with same text</p>	<p>Appeal has been lodged with Office of Commissioner for Environmental Information</p>	<p>Given the systematic non-compliances of the Irish Administration</p>

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Energy and Natural Resources / Minister for Environment, Heritage and Local Government.	Environmental Acquis.	<p>and statement that Directive 2003/4/EC does not require him to do so. Failure to comply with S.I. No. 133 of 2007 in reply.</p> <p>Replies from Minister of Environments office REP7528/JG/09 delegating response to Minister for Communications and Natural Resources. Reply from his office REP 7873/JG/10 but refusal to answer request within statutory period.</p>	(CEI/10/0001) and is under consideration.	with the Environmental Acquis the public has a right to know the legal policy of the Administration with the Environmental Acquis. This follows from Article 2 (1 c) of Directive 2003/4/EC.
<p>22<sup>nd</sup> September 2009 and second request 13<sup>th</sup> December 2009:</p> <p>An Bord Pleanala – the planning appeals authority.</p>	<p>Legislative basis for Oral Hearing on Corrib pipeline project. Specific approach of An Bord Pleanala to moving to a system of decision making that implements the Environmental Acquis.</p> <p>Second Request: Parameters An Bord Pleanala applies to assessing risk and determining acceptance criteria given inconsistencies in Land Use Planning on Corrib Project that were clearly politically motivated.</p>	<p>Complete failure to answer first request despite reminder on 21 October and correspondence to Head of Government and Head of State drawing attention to this fact.</p> <p>Failure to answer second request by 14th January with acknowledgement that it had only reached relevant person in An Bord Pleanala that day. Correspondence REP7872/JG/09 with Minister for Environment's office on 23<sup>rd</sup> December and 16<sup>th</sup></p>	Appeal has been lodged with Office of Commissioner for Environmental Information (CEI/10/0002) and is under consideration.	Neither Directive 2003/4/EC nor Directive 2003/35/EC are being followed by An Bord Pleanala in the conduct of their regulatory function and they are also frequently <i>Ultra Vires</i> with regard to other Directives of the Environmental

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		<p>January.</p> <p>Internal review requested 19<sup>th</sup> January. Completely inadequate reply to both requests (GA0004) on 20<sup>th</sup> January.</p>		<p>Acquis.</p> <p>As Statoil stated to the media in August 2009; <i>“When we look at political risk with practical consequence to project progress then Ireland unfortunately stands out as an example”</i>.</p>
<p>23<sup>rd</sup> August 2009: Head of State – sent by registered mail.</p>	<p>Irish State’s compliance programme with the EU Environmental Acquis, which outlines the legislative requirements, the schedules for legislative transposition, the training requirements, the technical plans (budgets, schedules and responsibilities) for its implementation, the measures to address non-compliance, etc.</p>	<p>No reply received.</p>		
<p>12<sup>th</sup> October 2009: Department of the Taoiseach (Prime Minister)</p>	<p>As above plus disciplinary procedures related to failure who prevent proper implementation of legislative measures connected with Environmental Acquis, prevent proper dissemination of information related to the environment.</p>	<p>Repeated failures of Department of Taoiseach to provide the requested information, such as e-mail reply on 2<sup>nd</sup> November from Patricia Collins / Paul Mooney of Taoiseach’s Private Office.</p>		<p>AIE/2009/039 Reply from Department of Environment, Heritage and Local</p>

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	Copy of submission to Commission as per Article 9 of Directive 2003/4/EC that was due in August 2009.	Reply from Department of Environment, Heritage and Local Government on 4 <sup>th</sup> December that they were handling request now designated AIE/2009/039. Request finally received on 14 <sup>th</sup> December 2009.		Government clearly shows that Irish Administration has no programme for compliance with Environmental Acquis and that no Submission required by Article 9 of Directive 2003/4/EC has been finalised.  Reply forwarded on to Patrick Wegerdt in DG Environment.
4 <sup>th</sup> December 2009: Eirgrid	Response of Eirgrid to Poyry Report published in July 2009 that Eirgrid participated on and which clearly demonstrated the economic devastation the proposed Wind Energy programme would cause. <a href="http://www.poyry.com/index_cases/index_cases_12.html">http://www.poyry.com/index_cases/index_cases_12.html</a>	Repeated refusal of Eirgrid to reply in which they denied knowledge of this report, such as on 23 <sup>rd</sup> December, 4 <sup>th</sup> January. Refusal of Eirgrid to answer request for internal review or follow procedures related to S.I. No. 133 of 2007. Justification finally being that they had no official comment to make on this	Appeal and fee of €150 lodged with Commissioner for Environmental Information.	Eirgrid have been allotted a capital programme of €4 billion under the wind energy programme, the cost of which they can transfer directly back to the consumer.

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		Poyry report.		
13 <sup>th</sup> December 2009: Industrial Development Authority (IDA).	Irish Times Article: <a href="http://www.irishtimes.com/newspaper/weekend/2009/1205/1224260115584.html">http://www.irishtimes.com/newspaper/weekend/2009/1205/1224260115584.html</a> attributed to Chief Executive Officer of IDA. Requested economic impacts, costs, subsidies, resulting electricity prices, loss of competitiveness in other sectors and resulting job losses.	<p>Reply on 15<sup>th</sup> December stating that the article was misquoted from other publication "<i>in which the potential of Ireland as a source of wind power is clear. The capacity factor for onshore wind turbines – the measure of the time the turbine is actually cranking out power – 35% in Ireland. This compares with an European average of 25%</i>"</p> <p>As the 'potential' had been stated I confirmed that my original request stood. Reply obtained IDA/001/AIE that IDA had no information available to reply to my request. Internal review requested and reply received that no information could be found in that available to the IDA from DCENR, Eirgrid, Electricity Supply Board (ESB), Sustainable Energy Ireland (SEI), Minister Ryan's Green Report and other Government Policy Documents.</p>	Appeal to the Commissioner for Environmental Information (CEI/10/0003).	<p>Clearly false information is being disseminated to the Irish public and the article in the Irish Times, the second largest paper in Ireland, was never corrected.</p> <p>Furthermore Eirgrid Generation Adequacy Reports clearly state that wind availability has never reached 35%, indeed it has been as low as 29% in 2007. These reports are available to the IDA.</p>
16 <sup>th</sup> December	Article in Irish Times on 16 <sup>th</sup> December	Refusal to comply with S.I. No.	Appeal and €150	The ESRI Study

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<p>2009: Economic and Social Research Institute (ESRI).</p>	<p>and <a href="http://www.esri.ie/publications/latest_publications/view/index.xml?id=2930">http://www.esri.ie/publications/latest_publications/view/index.xml?id=2930</a> . Requested economic impacts, costs, subsidies, resulting electricity prices, loss of competitiveness in other sectors and resulting job losses. Costs and benefits of obtaining same greenhouse gas reductions using other renewable technologies than wind energy.</p>	<p>133 of 2007 on 18<sup>th</sup> and 21<sup>st</sup> December claiming that the ESRI was not a government body (it is a State Agency) and that all the information was available in his publications.</p>	<p>lodged to Commissioner for Environmental Information 24<sup>th</sup> December (CEI/09/0018)</p>	<p>states on Page 2 that <i>"this paper considers how the policy target of generating 40 per cent of electricity from renewable sources by 2020 is likely to impact on the welfare of the consumers and producers on the island and on the competitiveness of the Irish economy"</i>. However, the information requested is not available from the ESRI and the reports have major errors.</p>
<p>26<sup>th</sup> October 2009: RTE the national broadcaster.</p>	<p>Details relating to benchmarking on reporting of environmental issues, such as their definitions of environmental pollution and risk, training and qualification of staff reporting on environmental matters, etc.</p>	<p>Reply on 27<sup>th</sup> October (FOI 2009/098) denied information as it was not deemed to be environmental information. Internal review requested with</p>	<p>Appeal lodged with Commissioner for Environmental Information</p>	<p>Public Bodies have obligations for dissemination of environmental information and</p>

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	Note: RTE's coverage of the Corrib project was frequently false and enflamed the controversy there.	reply of 29 <sup>th</sup> October from Adrian Moynes Group Secretary RTE that Directive 2003/4/EC and the Aarhus Convention did not apply to RTE and specifically to its journalistic function.	(CEI/09/0015) and accepted on 5 <sup>th</sup> November.	RTE has the main role in Ireland in this regard. Article 7 (1) first paragraph of Directive 2003/4/EC - it is intended that the role of the regulatory process is accurately reported.
17 <sup>th</sup> November 2009: TG4 (the Irish language broadcaster)	Information as requested above of RTE following a particularly inflammatory programme on the 16 <sup>th</sup> November about the Corrib development in which false statements were made about the legal situation in Ireland for industrial projects.	No reply received.		
Formal submission of 23 <sup>rd</sup> August 2009: Dun Laoghaire Rathdown Co. Council (one of the four Local Authorities in Dublin).	Legislative basis, organisational procedures and funding arrangements for 'Cool Earth' exhibition, which had previously featured the eco-warrior grouping Shell to Sea, of which prominent members have since been sentenced to jail terms for public order offences related to the Corrib project.	Initial requests for information on the arrangements for the 2009 exhibition had been repeatedly denied. Finally the Aarhus reference in the request was formally recognised and an official response received. Reply received on 19 <sup>th</sup> September (AIE/03/09), which failed to	Didn't know it was possible then.	Reply was inadequate as there was no legislative basis and selection criteria for exhibition and a refusal to state the funding

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		highlight that an Appeal / Review process was available as per the guidelines for S.I. No. 133 of 2007.		arrangements. Essentially public money and premises were being used for a political event.
3 <sup>rd</sup> July 2009: Environmental Protection Agency (EPA)	<p>Statement of Dr Kelly Director General of EPA to Irish Independent: <a href="http://www.independent.ie/opinion/analysis/going-green-is-the-way-to-our-future-prosperity-1795419.html">http://www.independent.ie/opinion/analysis/going-green-is-the-way-to-our-future-prosperity-1795419.html</a> which followed that of Irish Academy of Engineering: <a href="http://www.iae.ie/news/article/2009/jun/15/review-irelands-energy-context-changing-economy/">http://www.iae.ie/news/article/2009/jun/15/review-irelands-energy-context-changing-economy/</a> highlighted a few days previously in same paper on how Ireland's renewable energy policy was based on ideology and should be stopped pending a full review.</p> <p>Requested figures on how "Green Jobs, Green Technologies and Renewable Innovations" were going to deliver in terms of sustainable employment, economic competitiveness and meeting environmental targets for greenhouse gases, nitrogen oxides, particulates and the landfill directive.</p>	Repeated refusal by EPA to acknowledge request with further e-mail on 25 <sup>th</sup> July. Complete failure of EPA to respond to request on 30 <sup>th</sup> July. Further correspondence on 8 <sup>th</sup> August and on 25 <sup>th</sup> August in which the Aarhus details of Dun Laoghaire Rathdown under S.I. No. 133 of 2007 were highlighted.	Wasn't made aware that one was available by the EPA who at no point followed the procedures in S.I. No. 133 of 2007. At that stage I was only aware of the Aarhus concept and not its implementation regulations in Ireland.	Clear example of politically motivated false information being disseminated to the Irish Public following the correct dissemination of the facts related to the Renewable Energy programme being highlighted in the media by the Irish Academy of Engineering.

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15 <sup>th</sup> September: 2009: Danish Embassy in Dublin and 7 <sup>th</sup> September registered mail sent to German Embassy	<p>False information related to Danish Wind Energy Programme published in Irish Times  <a href="http://www.irishtimes.com/newspaper/innovation/2009/0904/1224253754937.html">http://www.irishtimes.com/newspaper/innovation/2009/0904/1224253754937.html</a>            Refusal of Danish Embassy to provide data to support claims that Danish wind energy is cheaper than imported nuclear energy.</p> <p>One of the first off shore wind parks was the Arklow Bank project of the Irish East Coast that was designed by the University of Stuttgart. This University and the German Embassy have refused time and time again to respond to requests related to the energy and economic performance of this wind park.</p>	Total refusal to reply on these issues.		Information summarised and submitted to Patrick Wegerdt of DG Environment Unit A. 2. on 6 <sup>th</sup> October 2009.
14 <sup>th</sup> October 2009: Department of Foreign Affairs	<p>Correspondence above with Danish and German Embassies highlighted and requested procedures relating to other Member States that were clearly disseminating false information on the environment.</p> <p>Procedures for addressing representatives of other States, such as the Vatican, who</p>	Failure of Freedom of Information website of Department of Foreign Affairs to reply even when reminded a month later.		

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	<p>act outside the democratic process and obstruct the implementation of the Environmental Acquis.</p> <p>Note: Senior members of the Clergy in Ireland have a track record in supporting organisations such as Greenpeace and Shell to Sea, who act outside the democratic process.</p>			
<p>July 200: Joint Oireachtas Committee on Climate Change and Energy Security (Oireachtas is the Parliament)</p>	<p>Refusal of Oireachtas Committee to post Submissions on website related to call for submissions for Irelands Electricity Needs Post 2020.</p>	<p>Access to Submissions was denied as it was stated they would only be available when the Committee had finished its report, which didn't occur until December 2009.</p> <p>Repeated correspondence was held with Clerks of the Oireachtas Committee to highlight that the public was under Aarhus entitled to this environmental information. After considerably more than a month and reference to correspondence with DG Environment Unit A.2. and the Aarhus Convention the Submissions were finally published:</p>		<p>Note: The Report by the Joint Committee in December 2009 on the Submissions completely failed to address or even mention the serious technical concerns that had been raised by my Submission and that of the Irish Academy of Engineering in relation to Irish Energy Policy.</p>

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		<a href="http://www.oireachtas.ie/viewdoc.asp?fn=/documents/Committees30thDail/J-Climate_Change/Submissions/document1.htm">http://www.oireachtas.ie/viewdoc.asp?fn=/documents/Committees30thDail/J-Climate_Change/Submissions/document1.htm</a>		

In summary there are fundamental problems occurring with the Irish Administration in both access to information on request and in dissemination of incomplete or completely false information on the environment to the Irish Public. Directive 2003/4/EC is very clear in Article 3 (5) that Member States shall inform the public of the rights they enjoy. There clearly has been no active systematic dissemination on this issue in Ireland. Furthermore staff in Public Bodies have not been trained in the Directive as is required by Article 5 and it is distressing to repeatedly see how senior officials, such as secretaries to the Minister or Head of Government, refuse to make an effort to comply with the minimum requirements of the regulations. As regards disciplinary procedures related to officials who act outside the legislative framework these are clearly not being applied. Others have also commented on these aspects:

- <http://www.ocei.gov.ie/en/MediaandSpeeches/Speeches/2008/>
- <http://www.eeb.org/activities/transparency/The-Aarhus-Convention-in-operation-Ireland.pdf>

It is unfortunate that this issue is not just limited to simple information but relates to the huge sums of money that are being wasted through inappropriate policies outside of EU legislation on energy and waste management and a system of planning which is based on political patronage and has brought industrial development in the country to a halt. Huge financial losses are occurring as a result with resulting lost opportunities, job losses and retarded economic development.

If you have any more queries please don't hesitate to contact me.

Pat