

Comments to EU CHAP (2010) 00645 on result of RTE Access to Information Appeal CEI/09/0015

From: Pat Swords BE CEng FIChemE CEnv MIEMA

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In the summer and autumn of 2008 I was engaged with the dissemination of false information on environmental issues by the Irish media, in particular in relation to the controversial Corrib gas project. As I had exhausted all the complaints processes in Ireland and had seen one element of maladministration after another, I contacted the EU Commission's office in Dublin on the 6th November 2008. I highlighted the prohibitive cost and timeframes involved in taking a legal action through the Irish legal system and stated I was not an expert on media issues and 'Access to Justice' in this situation. I therefore requested advice on any areas where the EU would have competency in such matters.

My reply from the European Commissions Representation in Ireland (Eurojus Service) on the 9th December 2008 was a suggestion that I forward my comments on to Commissioner Wälstrom's office. This I did on the 18th December 2008, summarising the issues, including the cost of 'Access to Justice' in Ireland and the failure of Ireland to ratify the Aarhus Convention. I received a reply from the Head of Cabinet of Vice President Wälstrom on the 21st January 2009 (PC/erw A(08)3591D(09)19). At a later stage on 19th February 2009 I also received a second reply from DG Environment ENV.A.1 – Communication & Governance (ENV.A.1/AM D(2009) 28241 (see attachments to e-mail).

In addition to the fundamental problem of lack 'Access to Justice' to deal with media complaints, I also highlighted the total failure of the Broadcasting Complaints Commission to ensure the proper broadcasting of environmental issues and the correct application of EU Environmental Legislation. A farcical situation had developed where RTE, the State Broadcaster, on primetime radio had broadcasted a lengthy section on how a producer of 'Green' cement was being victimised as he was being refused an allocation of carbon credits by the Irish Authorities under the EU Emissions Trading Scheme. In reality cement clinker is produced by the burning of lime (calcium carbonate) at elevated temperatures to produce calcium oxide. In the case of the 'Green' cement this process had already occurred in a steel blast furnace in Europe and the carbon emissions had already occurred there, a process to which the emissions credits had already been allocated. However, the Broadcasting Complaints Commission decided otherwise in relation to my complaint over this broadcast:

http://www.bcc.ie/decisions_details/May2006/65%2006%20decision%20P%20Swords%20May06.doc

If we consider the Corrib project, RTE has failed to disseminate to the Irish public the legislative basis concerning this project and has inflamed the controversy at the site, which unfortunately has erupted into frequent violence. The main anti-development lobby 'Shell to Sea', which has regularly used anti-democratic techniques and violence have become essentially 'media darlings'. Five of this Group were jailed for being in contempt of the High Court, so the media 'red carpet' was rolled out for their cause.

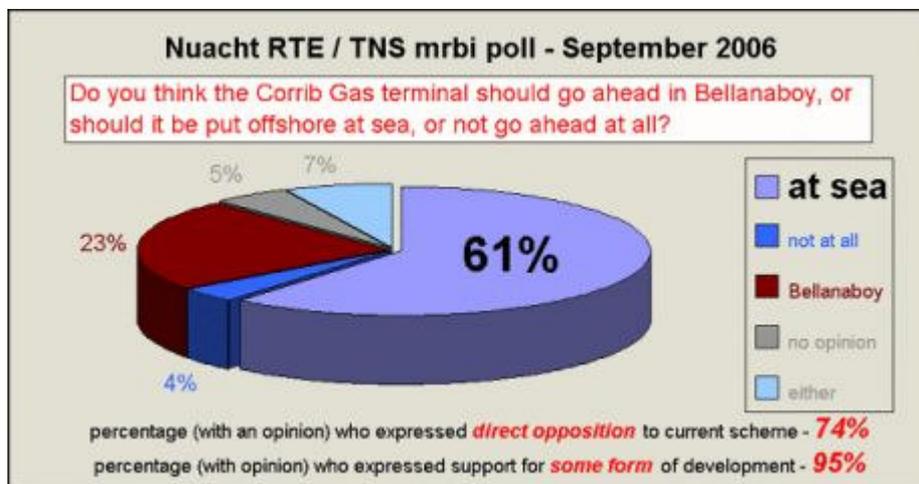
The Framework Safety Directive 89/391/EC clearly identifies nine principles of prevention, which include:

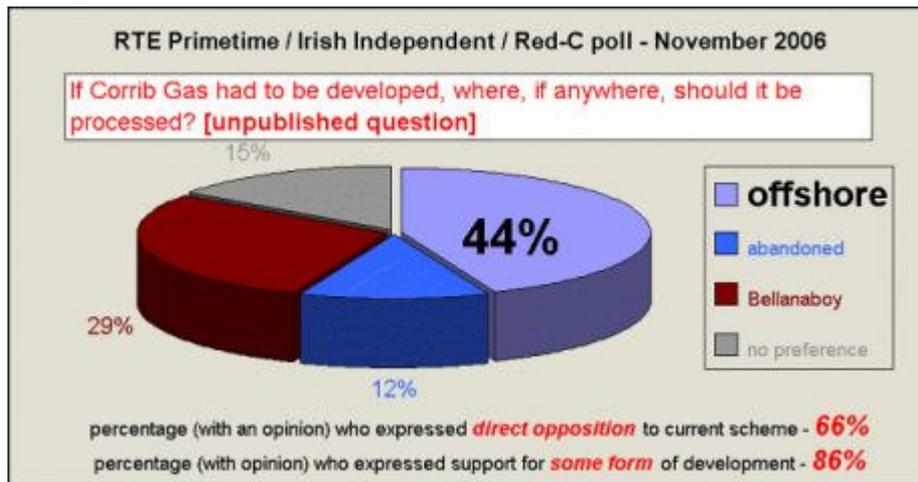
- Avoiding risks.
- Evaluating the risks which cannot be avoided.
- Combating the risks at source.
- Adapting to technical progress.

Despite the media coverage of the Shell to Sea campaign for an off-shore production platform to be installed, it was illegal to do so under the legislation and would have resulted in the Directors of Shell Exploration and Production Ireland being exposed to a jail sentence. Note: There have been over a hundred deaths on helicopter transfers to offshore rigs in European waters, if as is the case with the Corrib development, it is possible to build the production module on-shore, then this is what should be done.

These issues were addressed in the regulatory process for the project, but the media chose not to broadcast them. It is not the developer's obligation to instruct the public on how the regulatory system works or to run a public relations campaign as to why the relevant EU Directives concerning industrial development have been adopted by the democratic process. His obligations solely relate to compliance with the legislation. Compliance with legislation is not a matter for public debate and a 'media sport', i.e. a 'Trial by Media in the Court of Public Opinion'. It is disturbing that the State Broadcasters RTE and TG4, both public bodies, carried out opinion polls on whether the development should be built offshore or onshore:

- <http://www.rte.ie/news/2006/0925/mayopoll.html>
- <http://www.shelltosea.com/node/1200>





At no point have RTE or TG4 clarified to the Irish Public that it is simply illegal to construct offshore as advocated by this group, instead the controversy has been deliberately fuelled by their reporting, which has led to repeated violence directed against us who have delivered this project.

- On 12th March 2009 Judge Mary Devins sentenced Maura Harrington to jail for 28 days for the assault on a, which she described as a “despicable show of utter contempt”. In sentencing her, Judge Devins said she was less inclined to believe in her passion for her cause having “witnessed the enjoyment she seems to get in being in the public limelight”. She also sentenced her for being in contempt of Court.
- On 10th September 2009 Maura Harrington was jailed for three months in relation to the assault of a security guard and entering a Shell compound.
- On 11th February 2010 Patrick O'Donnell, who was the leader of a group of Shell to Sea protesters who surrounded and intimidated four Gardaí in an unmarked vehicle, was sentenced to seven months in prison. Judge Raymond Groarke told Patrick O'Donnell, that he was a “thug” and “a bully”.

Unfortunately the regulatory agencies were simply putting the documentation on the project approval process on their websites, leaving us high and dry to face the abuse from the media. Including the state owned broadcasters, who were then reporting on the environmental and safety controversy, when there was no legal basis in the documentation to support it. However, RTE the State Broadcaster and Irish Language State Broadcaster TG4, are public bodies. Environmental information was being generated for them by other public bodies. Their function as a Public Body and State Broadcaster is of course to disseminate information, the correct information, on the environment, not disseminate false information to generate controversy and increase audience figures.

This was the basis of my Aarhus request. RTE refused to answer it as they claimed exemption from Directive 2003/4/EC due to their ‘journalistic functions’. Hence the reason for my appeal to the Commissioner for Environmental Information. If we consider the other State Broadcaster TG4, this is a minority channel, using the medium of the Irish language. While the Irish language has a strong cultural value it is also very closely connected to Irish nationalism and history has shown us how time and time again people connected with the Irish language movement have stepped

outside the democratic process, using the cultural identity to justify this position. In Ireland unfortunately it is the cause and not the facts that count.

The Corrib situation was no different. One of the major 'abuses' that was considered by the violent anti-development minority to have happened in the early stages of the project was that English signs had been placed in the area, which was classified as a Gaeltacht (Irish speaking area) and that they had been 'invaded' by people with English accents. The programme on TG4 on the 16th November was therefore completely unacceptable. In it the retired teacher, who had been jailed for contempt of Court, was repeating in Irish about the injustices and how the law had been changed several times to facilitate the project. While this was completely false it was only serving two purposes (a) to titillate the public and (b) to fan the flames of what was already a delicate situation in which the voice of reason and moderation had not been heard.

The following day I sent in my file relating to the case with RTE (CEI/09/0015) and requested the same information. The e-mail went to info@tg4.ie and that of Pol O'Gallchoir, the head of TG4. They choose not to respond to this request.

The situation now is that having received this decision from the Commissioner for Environmental Information, I will once more contact the Broadcasting Complaints Commission about the failure of the State Broadcasters to disseminate the correct information on the environment and their behaviour to subvert the regulatory process by conducting opinion polls on how the regulator process should discharge its functions.