

To:

- Mr. Liam Cashman, Head of Unit, European Commission, Directorate-General Environment, Directorate A – Legal Affairs and Civil Protection, ENV.A.2 – Compliance Promotion, Governance and Legal Issues.
- CHAP (2010) 00645
- European Commission's Office in Dublin

From: Pat Swords BE CEng FIChemE CEnv MIEMA
10 Hillcourt Rd
Glenageary
Co. Dublin
pat.swords.chemeng@gmail.com

CC: Those listed at end of document.

Re: Situation in Ireland with Regard to Maladministration, Aarhus Convention and Request for Meeting

Date: 31/8/2010

Introduction:

1. We are a number of engineers and technical individuals across a range of industries.
2. Our serious concerns relate to policies associated with energy, waste and the regulation of industrial development in which there is clear evidence of "apparent" maladministration by the Irish Authorities related to EU Legislation.
3. These concerns have been validated by successive failures to access information on the environment regarding government decisions relating to the above.

By means of **CHAP (2010) 00645**, EU Ombudsman's complaint **2587/2009/JF** and other correspondence, the situation with regard to maladministration in Ireland has been extensively documented. Points to note include:

- A regulatory system, which is operating systematically outside the EU Legislative Framework. From appeal to the Commissioner for Environmental Information **CEI/10/0002**, it is clear that the Planning Appeals Board, An Bord Pleanála, does not hold records indicating it complies with the Environmental Acquis. On a systematic basis planning decisions have been made in which there has been a failure to issue the main reports and advice on which the competent authority will make its decision and the main reasons on which the decision is based. Companies have been falsely accused of causing pollution, unacceptable risk and significant environmental impacts without a single fact or figure used to justify these claims.

- A policy for 40% of Ireland's electricity to be produced by renewable sources ⁽¹⁾, almost exclusively from wind energy. This programme has never been subject to the requirements of public participation; the necessary Strategic Environmental Assessment (see Appeal **CEI/09/0016**) has simply never been prepared and there is no information on the environmental cost / benefits and alternatives considered. It is clear that the huge capital and operating costs of this programme are massively disproportionate to its environmental benefits, which could have been achieved with a fraction of the expenditure utilising other renewable technologies, particular those which are waste related. The fact that such a significant part of government policy affecting all citizens did not follow EU procedures (e.g. no cost benefit analysis and consideration of alternatives) and is a clear breach of the **Principle of Proportionality** is a matter of major concern.
- There has been deliberate obstruction ⁽²⁾ of waste to energy related projects, such as by the Minister for the Environment who has failed for two and a half years, without any technical justification, to sign the necessary foreshore license for the Dublin City Waste to Energy project. Currently a new waste policy, with the sole purpose of making energy to waste economically unviable, is being drafted without the necessary **Strategic Environmental Assessment**. Such actions have resulted in Ireland failing to meet its targets under the **Landfill Directive**.
- There have been systematic failures to comply with **Directive 2003/4/EC**. Examples include failures to provide information on request and with regard to repeated dissemination of false and misleading information on the environment by public authorities. As the Commissioner for Environmental Information highlighted in her annual report for 2009 ⁽³⁾, there is a lack of awareness generally regarding the rights of the public under the regulations. Despite it being a requirement of **Article 3 (5)** of the Directive, the Irish public simply haven't been informed of their rights.

In addition there are thirty four ongoing infringement cases against the Irish State. However, fourteen of these are proceedings for fines to enforce earlier judgements made against the Irish State in the European Court of Justice ⁽⁴⁾. No other Member State comes near in have such a poor compliance record and this must be placed in the context that the Irish State is one of the smallest Member States in terms of population and size.

¹ See for example: <http://www.dcenr.gov.ie/NR/rdonlyres/C71495BB-DB3C-4FE9-A725-0C094FE19BCA/0/2010NREAP.pdf> . The 40% target for 2020 was adopted in the October 2008 Budget.

² For instance Planning Decisions <http://www.pleanala.ie/> PL06S.PA0006, PL04.PA0010, PL04.218587 or PL23.225138 or Oireachtas debates: <http://debates.oireachtas.ie/DDebate.aspx?F=CLJ20081015.xml&Node=H2#H2>

³ <http://www.ocei.gov.ie/en/Publications/AnnualReports/AnnualReport2009/File,12067,en.pdf>

⁴ <http://ec.europa.eu/environment/legal/law/statistics.htm> and http://www.irishenvironment.com/irishenvironment/articles/Entries/2010/6/1_Andrew_L.R._Jackson,_The_Emerald_Isle_Ireland's_environmental_compliance_record_in_cross-EU_terms.html

The above demonstrates that it is not just a simple disregard for certain legislative measures, but a culture of systematically operating outside the legislative framework for personal / electoral gain. Indeed it has already been highlighted in the complaint documentation ⁽⁵⁾ that the Irish Administration simply refuses to provide its legal policy for compliance with the Environmental Acquis.

The results of this have been devastating, under REFIT electricity costs are already some 15% higher than they should be and these contracts have been signed for fifteen years. Companies cannot carry the burden of industrial electricity rates, see for instance recent submissions by major companies to Commission for Energy Regulation ⁽⁶⁾, rates which are essentially the highest in the EU and rising rapidly as the wind energy programme is implemented. Furthermore, the systematic breaches of EU environmental legislation in the regulatory process has led to companies publicly stating that the political risks of doing business in Ireland are too high and one, the US company Covanta which is engaged on the Dublin City Waste to Energy plant, is publicly stating ⁽⁷⁾ that it is having to consider legal action against the Irish State.

Article 120 of the **Lisbon Treaty** on Economic Policy requires Member States to act in accordance with “the principles of an open market economy with free competition, favouring an efficient allocation of resources”. **Article 173 (Industry)** requires that the actions of the Union and Member States shall be aimed at “encouraging an environment favourable to initiative and to the development of undertakings throughout the Union, particularly small and medium-sized undertakings”. These Treaty conditions are being systematically breached in Ireland and as a result businesses are no longer viable and increasingly technical resources, such as those involved in industrial development, have to work abroad or seek unemployment assistance.

COM(2002) 725 on “**Better Monitoring of the Application of Community Law**” clearly highlights how the Commission is the Guardian of the Treaties and has a duty to remind the Member States of their commitments and to seek the best instruments at all times. The document clearly states that merely enforcing the law against infringement is not enough; there is a need for prevention also. **COM(2002) 725** also states that “it is not only the European and national institutions that are concerned by all this. Ultimately this communication in many respects concerns the citizens themselves. Through information, participation and access to justice, they are to be actors of a Community based on the rule of law”. The key aspect of this is the United Nations Economic Commission for Europe (UNECE) Aarhus Convention on Access to Information, Public Participation and Access to Justice in Environmental Matters.

The Irish State has failed to ratify the **Aarhus Convention** and due to a lack of public participation and access to justice, citizens here are unable to act to ensure environmental compliance. However, it appears that the EU Commission is taking a *laissez faire* attitude to the Aarhus Convention in Ireland in that:

⁵ Part of correspondence to Patrick Wegerdt, European Commission, Unit A2, Compliance promotion, governance and legal issues in 2009/2010, which led to CHAP(2010)00645 investigation being opened.

⁶ <http://www.cer.ie/en/renewables-current-consultations.aspx?article=d7a3e817-e64d-47e4-8f50-e0b6b187ad69>

⁷ <http://www.independent.ie/national-news/us-poolbeg-firm-wants-gormley-to-stand-aside-2280588.html>

- It accepted a verbal agreement in September 2007 relating to Ireland being obliged to respect the commitments arising from the Convention where they concern provisions falling within the competency of the Community.
- It approved the **REFIT I** renewable tariffs (**State Aid N571/2006**) in September 2007 for renewable energy, predominantly wind, up to at least 1,450 MW, without as highlighted above any Strategic Environmental Assessment being completed or preparation of any environmental cost / benefits or examination of alternatives. Note: The EU ratified the Aarhus Convention in February 2005.
- It has approved over €100 million in funding for the €400 million electricity interconnector to the UK. As the Irish Academy of Engineering in its July 2009 submission to the Joint Oireachtas Committee ⁽⁸⁾ and the Poyry July 2009 report on Wind Intermittency ⁽⁹⁾ clearly pointed out, there is no economic justification for this project and it is solely to facility larger expansions in wind energy. The programme which has never been through the proper **Strategic Environmental Assessment**.

I have already been in contact with the Environmental Affairs Officer at the UNECE office in Geneva with regard to the **REFIT I** tariffs and bringing a complaint to the Aarhus Convention Compliance Committee. Note: UNECE are highly concerned about the current level of maladministration relating to environmental issues in Ireland ⁽¹⁰⁾. It is also clear that the EU Commission has contributed to this maladministration in failing to act as a Guardian of the Treaties, promote Aarhus compliance and the rights of EU citizens in Ireland, and with regard to renewable energy in Ireland, act within the terms of the Aarhus Convention.

While extensive documentation has already been submitted related to maladministration with regard to the Environmental Acquis in Ireland, and we are in a position to document further cases of maladministration, the commitment given by the Directorate General for the Environment below in their reply **S2010-120127** related to the EU Ombudsman's complaint 2587/2009/JF is completely inadequate:

- "Where information provided by the complainant identifies cases where issues of non-compliance with the provisions of **Directive 2003/4/EC** are raised and the review mechanisms of **Article 6** of the Directive have been exhausted, the Commission will raise these with the Irish authorities directly under the EU Pilot scheme".

The Charter of Fundamental Rights (Lisbon Treaty) is clear in that there is a **Right to Good Administration** which includes:

⁸ http://www.oireachtas.ie/viewdoc.asp?fn=/documents/Committees30thDail/J-Climate_Change/Submissions/document1.htm

⁹ http://www.poyry.com/index_cases/index_cases_12.html

¹⁰ Personal communication with Fiona Marshall, Environmental Affairs Officer, UNECE. UNECE has been contacted on several occasions in the last quarter by Irish groups / individuals concerned about abuses related to the principles of the Aarhus Convention, but is not in a position to take a complaint against the Irish State as it refuses to ratify the Convention.

- The right to write to the Union and receive a reply.
- That the Union must make good any damages caused by its institutions or its servants in performance with its duties, in accordance with the general principles common to the laws of the Member States.

We are therefore requesting a meeting with the Directorate General for the Environment, in which we are expecting that the strategy for dealing with the maladministration highlighted to date and for ensuring Aarhus Convention compliance in Ireland will be outlined. A sample of the individuals who wish to attend this meeting is given below. To us as EU citizens in Ireland it is clear that we are not obtaining the rights granted in other Member States and that the principles enshrined in the Directorate General for the Environment's website on the Aarhus Convention ⁽¹⁾ are being denied to us.

Yours sincerely,

Pat Swords BE CEng FICHEM CEnv MIEMA	Principal Chemical Engineer and Environment, Health and Safety Consultant	pat.swords.chemeng@gmail.com
Patrick L O'Brien M.Sc FCIWEM CEnv MICHEM MCIWM	Senior Environmental Consultant	ptobrien18@gmail.com
Oisín O'Sullivan BE	Senior Environmental Consultant	oposull@gmail.com
Mike Clucas BSc (ChemE)	Senior Chemical Engineer	mikeclucas@hotmail.com
Brendan Cafferty	Secretary Pro Gas Mayo	brendancafferty@hotmail.com
Mr. Jerry Waugh BE CEng MIEI MIEE	Senior Electrical Engineer	jerwaugh@yahoo.co.uk
Keith Elliott BA BAI CEng MICE	Senior Engineering Project Manager	
Eamonn Devery BE CEng	Principal Power Generation Engineer	
Raymond Sexton BE CEng	Chartered Engineer	raymond.sexton@hotmail.com
Mervyn Wilmot	Chartered Engineer	
Dr Andrew Petersen	Retired Head of Applied Biology at Irish Institute of Technology and Laboratory Services provider	
Robin Bury	Retired Business Development Manager in Irish Export Board	

¹¹ <http://ec.europa.eu/environment/aarhus/index.htm>