

Communication to Aarhus Convention Compliance Committee by Pat Swords BE CEng FIChemE CEnv MIEMA

I. Information on Correspondent

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II. Party Concerned

European Community

III. Facts of the Communication

The Republic of Ireland is progressing a massively expensive renewable energy programme of predominantly wind energy, see for instance announcement in October 2008:

- *Minister for Environment, John Gormley T.D. has announced a revised ambitious target for renewable penetration in the electricity sector. The new target of 40% is a significant increase from the previous goal of 33% and exceeds considerably both current EU targets of 20% and the UK's current target of 15%.*

The Minister said: "One of the most effective ways of reducing our national greenhouse gas emissions is to generate as much electricity as possible from renewable sources rather than from fossil fuels. The previous Government adopted a target that 33% of electricity consumed would be from renewable sources by 2020. Today I can confirm that the Government has now agreed, on the recommendation of my colleague, the Minister for Communications, Energy and Natural Resources, Eamon Ryan, T.D. to increase this target to 40%. The target is underpinned by analysis conducted in the recent All Island Grid Study which found that a 40% penetration is technically feasible, subject to upgrading our electricity grid and ensuring the development of flexible generating plant on the electricity system."

The capital costs alone of this programme at over €30 billion are staggering. Furthermore at the EU damage cost for carbon dioxide of €9 per tonne, the environmental damage avoided by implementation of this project amounts to little more than €36 million per year. Sadly the same reduction in greenhouse gas emissions could have been achieved for less than 1/30th the cost by proper implementation of waste to energy plants and biogas projects. However, these were obstructed by the Administration.

Furthermore this programme has never been through the process of Strategic Environmental Assessment (Directive 2001/42/EC). Neither has there ever been any cost / benefit studies or consideration of alternatives completed for this programme.

Under Pillar I of the Aarhus Convention it took me a complete year to document this fact, in doing so having to go to appeal and investigation by the Commissioner for Environmental Information. See decision CEI/09/0016 in regard to the Department of Communications, Energy and Natural Resources on the website below and as attachment:

- <http://www.ocei.gov.ie/en/DecisionsoftheCommissioner/>

The implementation of Directive 2001/77/EC on electricity from renewable sources in Ireland has been nothing but a complete Wind Energy programme. According to EirGrid¹ chief executive Dermot Byrne in March 2010 “there were currently 1,260 MW of wind energy connected to the Irish grid. In addition, there are 1,300 MW under construction and a further 3,990 MW would be sanctioned under the next round of allocations”.



The Growth of Renewable Capacity for Electricity Generation in Ireland 2004 to 2009

The Department of the Environment’s own website is clear about Strategic Environmental Assessment (SEA) (<http://www.environ.ie/en/DevelopmentandHousing/PlanningDevelopment/EnvironmentalAssessment/>) and the implementation of Directive 2001/42/EC in Ireland under the 2004 Regulations. The Directive applies across a wide range of sectors, including energy. Furthermore wind energy developments are listed in the Directive on Environmental Impact Assessment (85/337/EEC as amended) as requiring environmental impact assessment. So a programme above of such comprehensive installation of wind energy is subject to the requirements of a Strategic Environmental Assessment. If we consider the Aarhus Convention itself, then this is addressed by Article 7.

Despite the complete absence of compliance with public participation in decision making (Pillar II of the Aarhus Convention), the EU Commission approved the REFIT I programme for financial support of this programme in September 2007 (State aid N

¹ The Irish State owned grid operator

571/2006 Ireland: RES-E support programme, see attached). This was the main financial support mechanism for this programme.

In March 2010 the EU Commission further approved €110 million for the interconnector project between Ireland and the UK.

- <http://europa.eu/rapid/pressReleasesAction.do?reference=IP/10/231>

Successive studies have shown that there is no economic justification to this project:

- See the Submission by the Irish Academy of Engineering to the Joint Oireachtas (parliament) Committee on Climate Change and Energy Security in June 2009:
http://www.oireachtas.ie/viewdoc.asp?fn=/documents/Committees30thDail/J-Climate_Change/Submissions/document1.htm
- The in-depth review completed by the Finnish Engineering Group Poyry in July 2009 on the proposed UK and Irish Wind Energy Programme:
http://www.poyry.com/index_cases/index_cases_12.html
- An in-depth study by the Bremer Energie Institut in July 2010:
<http://www.bremer-energie-institut.de/download/bewp/bewp02.pdf>

It is clear that the sole justification of this project is as a key component of this Irish wind energy programme.

- <http://debates.oireachtas.ie/DDebate.aspx?F=CLJ20100915.xml&Page=1&Ex=53#N53>

Furthermore a request by Jerry Waugh, Chartered Engineer, to the UK Authorities under the Environmental Information Regulations, 2004 (Pillar I of the Aarhus Convention), see FOI Request 10/1870 attached, demonstrated that no arrangements had been made in the UK for exporting and importing wind energy on this system.

The EU Commission is therefore directly funding to the tune of €110 million a key element of a programme which has not been subject to the proper public participation in decision making (Pillar II of the Aarhus Convention).

IV. Nature of Alleged Non-Compliance

The Republic of Ireland has failed to ratify the Aarhus Convention. There are considerable breaches of the EU Environmental Acquis occurring in Ireland, which are unfortunate, but cannot be dealt with through the Aarhus Convention Compliance Committee. However, the European Community is a full party to Convention since February 2005. It is clearly supporting, both by means of direct funding and by approving state aid, the renewable energy programme in Ireland. This support is being provided in spite of the fact that the programme has failed to comply with the requirements on Public Participation in Decision Making (Pillar II of Aarhus Convention). Furthermore, this programme fails also to comply with Pillar I of the Aarhus Convention, as public bodies in Ireland are failing to provide key information on this programme on request and routinely engaged in dissemination of false information on the environment in relation to this programme, see for examples

Decisions CEI/09/007 (IDA and attached clarification), CEI/10/004 (Eirgrid and attached clarification), CEI/10/0008 (University College Dublin) below.

- <http://www.ocei.gov.ie/en/DecisionsoftheCommissioner/>

Finally with regard to Pillar I of the Aarhus Convention and the European Commission it is necessary to point out that the recent Renewable Energy Action Plan for Ireland prepared for the EU Commission, see below, as per other Member States, simply does not quantify any environmental benefits, such as greenhouse gas reductions, any alternatives considered to achieve these benefits or any details related to Public Participation.

- http://ec.europa.eu/energy/renewables/transparency_platform/action_plan_en.htm

V. Provisions of the Convention relevant for the Communication

Requirements related to Article 7 on Public Participation concerning plans, programmes and policies related to the environment have not been adhered to. Furthermore Article 5 on Collection and Dissemination of Environmental Information has not been complied with, as the Irish Public has been not been informed of the key facts on this programme and instead routinely disseminated false information on the environment related to this programme by the Irish Administration. Despite these clear breaches of the terms of the Aarhus Convention, the EU Commission has approved and directly funded this programme. Furthermore the EU Commission is failing with regard to its requirements for Article 5 as the recent Renewable Energy Action Plans prepared for the EU Commission, which outline how 20% of Europe's Energy is to be obtained from renewable sources by 2020 (a value in excess of 100 billion Euros per year), do not provide any details of environmental benefits or alternatives considered.

VI. Use of Domestic Remedies

For more than two years I have been highlighting the major problems with this renewable energy programme, particularly the complete breach of the principle of proportionality and the failure to address the costs / benefits and alternatives. On the 13th October 2008 I submitted a paper on the folly behind Ireland's wind energy programme to the Joint Oireachtas Committee on Climate Change and Energy Security. In June 2009 I submitted a further Submission to the Joint Oireachtas Committee on Climate Change and Energy Security:

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

In January 2010 the EU Ombudsman, who does about 300 detailed investigations a year, started a detailed investigation (2587/2009/JF) in my name related to the infringements of Environmental and Energy Legislation in Ireland. Currently this is under review with a decision not expected until the end of the year by the earliest. (See file on EU Ombudsman attached).

In March 2010 the EU Commission opened a formal complaint investigation (CHAP (2010) 00645) in my name related to compliance with EU Environmental Legislation. In November 2009 I contacted the Garda Bureau of Fraud Investigation related to the systematic failures of senior elected and non-elected officials to comply with the

legislation on the statute books and a complaint file (FB11/242.09) was opened in my name.

I repeatedly contacted the EU Commission with regard to the dreadful situation of non-compliance with the EU Environmental Acquis in Ireland and the renewable energy programme in particular. However, they have been consistently unwilling to address the issues with regard to renewable energy. In particular the EU Ombudsman's European Code of Good Administrative Behaviour has simply been ignored: <http://www.ombudsman.europa.eu/resources/code.faces> . See for example correspondence from September 2010 as attachment.

Finally, I repeatedly request information from the Irish Authorities under the Access for Information on the Environment regulations (Pillar I of Aarhus Convention – Directive 2003/4/EC). However, I have consistently not been provided with the answers requested. These requests have then been brought to Appeal to the Office of the Commissioner for Environmental Information (see: <http://www.ocei.gov.ie/en/DecisionsoftheCommissioner/>). The Commissioner has delivered over four decisions in relation to these requests – generally in favour of the authorities. The reason for this is that the information requested does not exist – this is in spite of the fact that the Irish Authorities are required under EU Legislation (Directive 2003/4/EC) to develop and disseminate this information – examples from the Decisions of the Commissioner include: Request for the Strategic Environmental Assessment in relation to renewables programme, request for Cost Benefit Analysis in relation to renewables programme, request for information regarding the economic impacts of the wind energy programme, its costs, subsidies required for job creation and industrial grants, resulting electricity prices, loss of competitiveness in other manufacturing sectors and resulting job losses, etc.

VII. Confidentiality

I have no requirement to keep any of the material confidential.

VIII. Attachments

- Commission Decision on State Aid N 571/2006 (REFIT I Programme)
- Environmental Information (Zip file)
 - CEI/09/0016 – Decision from Commission of Environmental Information Re DCENR
 - Clarifications related to DCENR
 - Clarifications related to IDA
 - Clarifications related to Eirgrid
 - FOI Request 10/1087 Jerry Waugh
- File on EU Ombudsman (Zip file)
 - Cover Letter April 2010
 - Final Submission on Complaint Ref 2587/2009/JF May 2010
 - Bringing the Irish Administration to Heel
- Correspondence to EU September 2010
 - E-mail to EU Commission requesting a meeting 31/8/2010
 - Letter to the EU Re Aarhus and requesting a meeting

- Proposed Agenda for meeting
- Reply from the EU Commission DG Energy on statements wrongly attributed.
- Eirgrid statements on wind
- E-mail to EU Commission on Decision on Appeal

VIX Summary

The renewable energy programme in Ireland has not been subject to the proper Public Participation in Decision Making procedures (Pillar II of Aarhus Convention). Furthermore there has been a failure by the Irish Administration to disseminate key information on the environment related to this programme and consistent evidence of dissemination of false information on the environment with regard to this programme (Pillar I of Aarhus Convention). The EU Commission has both approved and directly funded this programme. It has also failed (Pillar I of the Aarhus Convention) to ensure proper provision and dissemination of information related to the environmental benefits, such as greenhouse gas reductions, and alternatives considered related to this massively expensive programme.

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