The Failures to Properly Implement EU Environmental Legislation in Ireland

EU Environmental Acquis

As one who has spent a decade implementing EU Environmental Legislation in Central and Eastern Europe on EU Technical Aid Projects it is highly unfortunate that the crucial significance of this legislation is so poorly understood in Ireland. Even more unfortunate is the poor implementation of this legislation, which is costing this country very significant loss in terms of industrial development and general prosperity. So what are the Environmental Acquis and why they are so important? The Acquis is in fact the body of EU Legislation to date. The Environmental Acquis primarily relates to 300 or so Directives in the 'Environment' sphere. These Directives are not simply related to nature protection but also address, energy, transportation, agricultural practices, building quality, water, waste, air quality, pollution control, industrial risk, public participation and access to justice, etc. See http://ec.europa.eu/environment/enlarg/benefit_en.htm

All Member States must implement the Environmental Acquis. Is it working? Certainly in those Member States that have achieved a good record of implementation. One can particularly focus on the dramatic improvement in the quality of life in the new and candidate Member States in Central and Eastern Europe. For instance the report from the World Bank on "Why adopt the Environmental Acquis" and the positive benefits that are now visible in the Balkans:

- "Adoption of the Acquis introduces an approach to environmental governance that creates stronger ownership and an opportunity for citizens to influence government decisions, more transparency and local responsibility for natural resources; improved project programming and planning capacity; and a more predictable legal framework for foreign and private sector investors". http://siteresources.worldbank.org/INTECAREGTOPENVIRONMENT/Resources/511168-1191448157765/Chapter1.pdf

With regard to the section on page 29 relating to "Macedonia leading the way on IPPC performance", I was the key Integrated Pollution Prevention and Control (IPPC) international expert. However, contrast the current situation in Ireland, where the Irish Academy of Engineering in their Review of Ireland's Energy Policy, 2009, which formed a Submission to the Joint Oireachtas Committee on Climate Change and Energy Security, stated:

- *"It is difficult to have any confidence in the ability of Ireland's planning, regulatory and legal framework to facilitate the delivery of new energy projects on time or on budget. Large infrastructural projects in Ireland cannot be planned and completed in a predictable economic timeframe. The risk return calculations for such projects are currently little better than a lottery. Whether it is the experience with the Corrib project, construction of wind farms or delivery of new electrical transmission infrastructure (or indeed Ireland's road infrastructure), there is huge uncertainty about the final delivery date and overall cost which is not the case in other jurisdictions. Indeed following what can only be described as a debacle in relation to the Corrib field, Ireland is viewed as a high risk location for such large scale international investment precisely because of the unpredictability of its permitting processes".*

Even more unfortunate is the position of StatoilHydro, who have a 20% share in the Corrib project and stated to the media in August 2009:

- *"When we look at political risk with practical consequence to project progress then Ireland unfortunately stands out as an example".*

It is unfortunate that the above circumstances are occurring given that the legal framework in this jurisdiction regulating industrial development is the same as it is in other Member States, namely the Environmental Acquis. Why are they working so well elsewhere and not in Ireland?

In simple terms the EU can now be divided into three groups of Member States:

- The new and candidate Member States, not only are the economies in these countries in transition, but so too is their form of governance. There is a formal programme of compliance with the Acquis stretching from transposition of the legislation, to training of the regulators to implementation of the projects to ensure compliance. These can be easily assessed in the web in English, such as: http://www.vlada.hr/en/naslovnica/novosti_i_najave/2008/prosinac/croatian_government_defines_national_eu_accession_programme_for_2009 . Naturally if these countries do not meet the targets they will be unable to draw down on the Structural Funds which follow.
- The existing Member States, which have a culture of a high level of compliance. The prime example being the Nordic countries.
- The existing member States, which have a poor record of compliance. Unfortunately Ireland is the Member State with the worst compliance record with the Environmental Acquis. There are 29 current infringement cases relating to transposition and implementation of EU environmental law.

Again it is important to stress the extent of the Acquis and how they impact not only on industrial development but the day to day livelihoods of the citizen. For instance, the EU with the recent 2009 Directive on energy from renewable sources has set a target of 20% of Europe's energy to be derived from renewables. 20% of Europe's energy has a current value of a hundred billion Euros per year. If this cost is going to rise sharply due to improper implementation of the Directive then the cost exposure to the citizen is massive.

Aarhus Convention

The EU of course is simply not in the position to scrutinise every project brought to the planning stage, neither does it want to. Therefore the most significant element of the Environmental Acquis is the implementation of the Aarhus Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters of 1998. The purpose of the Convention was to help contribute to the strengthening of democracy in the region of the United Nations Economic Commission for Europe (UNECE) and followed on from the UN Rio Declaration in 1992.

In order for the EU to ratify the UN Convention a number of Directives were adopted and others modified. 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 Statutory Instrument (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 position of the Irish State is that these measures incorporated into existing legal provisions. However, the implementation of this Directive is subject to ongoing legal challenges. Indeed the European Court of Justice (C-427-07) has found in July 2009 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 the final warning issued on 18th March 2010. Ireland will be back in the European Court of Justice on this issue with a few short months and significant fines are inevitable.

In summary the whole legislative basis in relation to Environmental Impact Assessment, Strategic Environmental Impact Assessment and Integrated Pollution Prevention and Control was revamped to ensure effective Public Participation and Access to Justice. In other words, how Government generates policy and projects of a significant nature are approved through the planning process and regulated to control environmental pollution. The key issue is that Directive 2003/35/EC was clear in relation to Access to Justice that the public should have access to a review procedure before a court of law or another independent and impartial body established by law to challenge the substantive or procedural legality of decisions, acts or omissions. Furthermore:

- Any such procedure shall be fair, equitable, timely and not prohibitively expensive.

The EU formally ratified the Aarhus Convention to the UN in 2007. However, Ireland alone of the 27 Member States and has failed to do so, indeed the only other countries in Europe that have not done so are Russia, Switzerland and Iceland. The problem is our justice system simply does not meet minimum standards. The European Environmental Bureau (www.eeb.org), which is the main European Non-Governmental Organisation (NGO) on environmental issues and works with the EU Commission and Parliament, concluded in its Aarhus Convention in Operation report on Ireland with regard to compliance with Pillar 3 on Access to Justice:

- “Quite definitely not. Access to Justice is for the rich or for the very poor, takes as much as years to resolve cases, there is no expertise amongst the judiciary and there is a lack of enforcement in particular cases”.

I have assisted with the implementation of the EU Environmental Acquis in Central and Eastern Europe for more than 10 years. Initially the focus of the training programmes was on the regulators. However, in recent years this was expanded to open sessions not only for industry representative but specifically for members of the public and NGOs. The EU is very clear it its aims, there are three parties involved in compliance and proper implementation of the Environmental Acquis; (a) the regulator, (b) the developer and (c) the public with their NGOs. It is not a political process, it is 100% based on legislation. The public / NGOs have access to information and if they see an infringement they are in a position to challenge it, if necessary through a court of law. It is also necessary to expand on the terms a bit more, for instance a regulator could be a Government implementing a policy, a developer could be a public or a private project, an NGO need not necessarily be a

group with an 'environmental' tag; industry associations, professional and technical representative groupings, etc, are all NGOs.

This system is simply not functioning here. First of all Ireland has refused to ratify the Aarhus Convention, although it did sign it more than a decade ago. In order for the EU to ratify the Convention in 2007 a note was drafted setting down in writing certain explanations given verbally by Ireland, these are given below:

- "As a result, although it is not a party to the Convention, **Ireland** will be obliged to respect the commitments arising from the Convention **where they concern provisions falling within the competence of the Community**. Thus, the fact that Ireland has not yet ratified the Convention does not affect the commitments undertaken by the Community, the scope of which has been explained above. Nevertheless, this obligation has an impact solely on Community legal order. In other words, there is no public international convention law impact on Ireland".

Secondly as senior representatives of DG Environment of the European Commission stated in Ireland in June 2009:

- Individuals and NGOs could play a useful, enhanced role in ensuring compliance with EU environmental law if they were aware of the arguments being raised by the Commission and the government in ongoing cases. However, the EU representatives felt there was a vacuum on the NGO side in Ireland.

Part of this can be attributed to cultural issues, such as the reluctance of the Irish public to challenge authority. However, there is also the Access to Justice consideration, barriers are most definitely placed in one's path if one challenges authority, so most don't because the efforts to do so are so great.

Thirdly there is only one of the 'Pillars' of the Aarhus Convention implemented on the Statute Book, namely S.I. No. 133 on Access to Information on the Environment. Even this is failing dismally to work. Emily O'Reilly, the Ombudsman, is the Commissioner for Environmental Information; her speech provides an insight as to how the legislation is functioning in practice: http://www.ocei.gov.ie/en/MediaandSpeeches/Speeches/2008/File,7822,en.pdf . As she concluded implementation of the 2003/4/EC Directive is at a fairly minimalist level, in particular the technical, legal arrangements have been made but the wider operational arrangements have not been made. The Directive requires Public Bodies to complete a wide range of tasks not limited to:

- The dissemination of environmental information to the public in order to achieve the widest possible systematic availability and dissemination. Note: In the July 2009 case against Ireland the European Court of Justice made it clear that "the mere availability, through publications or on the internet, of rules concerning access to administrative and judicial review procedures and the possibility of access to court decisions cannot be regarded as ensuring, in a sufficiently clear and precise manner, that the public concerned is in a position to be aware of its rights on access to justice in environmental matters". Therefore active and systematic dissemination is simply not the action of placing the information on an internet site.
- The guarantee of the right to access to environmental information held by or for public authorities. In general the timeframe for this is one month from date of request.

- Ensuring officials are supporting the public in seeking access to information, in particular Member States must ensure that public authorities inform the public adequately of the rights they enjoy as a result of the Directive and to an appropriate extent provide information, guidance and advice to this end.
- Member States were required to report to the Commission on the experience gained in the application of the Directive by 14th August 2009. Ireland has not completed this task.

There are a multitude of problems therefore occurring with the proper implementation of Directive 2003/4/EC in Ireland. Firstly the public has not been informed of their rights. Secondly public authorities are refusing with regularity to provide information when it doesn't suit them. Thirdly active and systematic dissemination of information is in too many cases glaringly absent, see later Section on Corrib project. Currently the EU Ombudsman is investigating a complaint (2587/2009/JF) against the EU Commission relating to insufficient enforcement of infringements in Ireland related to Directive 2003/4/EC and a formal complaint CHAP (2010) 0065 is being processed by the EU Commission against the State of Ireland for non-compliance with Directive 2003/4/EC.

It is therefore clear that Ireland is the Member State with the most entrenched attitude to open and transparent governance. This is causing problems, it is not only the public and their environmental interest groups who are being disenfranchised, but so too industry which is located here and the people who work in supporting that industrial base. In a closed form of Governance where decisions are made through a process which is not transparent and held to accountability, abuses are bound to happen. Unfortunately over the last year or so it has become increasing evident with regard to the proper implementation of the Environmental Acquis that some serious failures are occurring. These are discussed now with regard to the Corrib Project, Ireland's Energy Policy and Ireland's Waste Policy, without doubt there are others.

Non-Compliances associated with the Corrib Project

There have been a serious of major non-compliances with several Directives over the regulation of the Corrib project, namely Directive 2003/4/EC on Access to Information, Directive 2003/35/EC on Public Participation in Decision-making, the Habitats Directive 92/43/EEC (as amended) and Directive 2008/1/EC on Integrated Pollution Prevention and Control. With regard to compliance with the Environmental Acquis, the developers SEPIL have met and in many cases exceeded the requirements of the Environmnetal Acquis. Yet the project has been consistently plagued with allegations of safety and environmental problems. When one considers that it is illegal under EU and National safety legislation for SEPIL to consider an off shore production platform, it is disturbing the close ties that have occurred between the media and many senior political figures with the 'Shell to Sea' grouping. Indeed if there was an accident on transfer to an offshore production platform the SEPIL Directors would be liable for a prison term under Irish legislation.

However, the public simply haven't been told this. It is clearly obvious that there has been no active dissemination of the correct information by the Irish regulatory authorities, indeed the most they have done is put the information on the website. If we consider the State broadcasters, RTE and TG4, then the RTE guidelines are clear: "The majority of the public looks to RTE radio, television and web services to provide them with much of the information they need as citizens of the State to participate in the democratic process. Accuracy in the facts RTE present is important to maintain this function". Article 7 of Directive 2003/4/EC is clear in relation to active and systematic dissemination of environmental information by public bodies, which is

relevant to their functions and which is held by or for them. This didn't happen in the Corrib case, there was endless broadcasting of environmental and safety problems. Currently the Commissioner for Environmental Information is processing an appeal (CEI/09/0015) against RTE, who are claiming exemption from Directive 2003/4/EC due to their 'journalistic functions'.

The other major non-compliance with this Directive is the manner in which An Bord Pleanala conducted the Oral Hearings. The May 2006 report on the safety of the Corrib on-shore pipeleine completed by Advantica on behalf of the Irish Government concluded, "proper consideration was given to safety issues in the selection process for the preferred design option and the locations of the landfall, pipeline and terminal". However, SEPIL as a gesture of goodwill agreed to reroute the pipeline to a location further away from the local settlement.

Three years later an Oral Hearing was called as part of the planning process for the re-routed pipeline. This lasted nineteen days. While such Oral Hearings are conducted in other jurisdictions for the purpose of public clarifications, unfortunately in Ireland it is clear that they are conducted in an adversarial manner in which clearly the aim is to discredit the developer. However, there were legal non-compliances with the manner in which the Corrib Oral Hearing was conducted. At no stage was any attempt made to clarify to the members of the public the legislative basis concerning the development, which is a failure to comply with Directive 2003/4/EC. Directive 2003/35/EC is clear with regard to projects involving an Environmental Impact Assessment procedure the main reports and advice issued to the competent authority have to be made available to the public in advance of the hearing.
So what was the basis on which An Bord Pleanala was going to make a decision relating to the safety of the pipeline? No idea, no such report or advice was ever issued. Finally in November 2009 An Bord Pleanala refused to grant planning permission for the proposed pipeline. Their letter of 2nd November is disturbing, for instance they interchanged hazard and risk. On what basis would the Irish State accept a pipeline as being suitable for grant of planning?

- "Adopt a standard for the Corrib Corrib upstream untreated gas pipeline that the routing distance for proximity to a dwelling shall not be less than the appropriate hazard distance for the pipeline in the event of a pipeline failure. The appropriate hazard distance shall be calculated for the specified pipeline proposed such that a person at that distance from the pipeline would be safe in the event of a failure of the pipeline".

SEPIL had no option but to go back and request a clarification. This clarification letter from An Bord Pleanala of the 29th January 2010 was clear in that a "full bore rupture" of the pipeline had to be assessed at maximum pressure and that persons standing beside the dwellings should not receive a dangerous dose of thermal radiation. This risk should be less than one in a million (individual risk of 10^{-6}). EU major accident hazards legislation is clear in that credible scenarios have to be addressed. A full bore rupture of a 500 mm diameter pipeline which has a wall thickness of 27 mm is simply not credible in the scenarios that could occur. Neither is there evidence of such occurrences from available engineering data.

The crux of the problem lies with the fact that An Bord Pleanala has no published guidance for assessing risk and determining acceptance criteria, which for the public is always going to be a difficult and emotive subject to understand. If for instance one considers wind turbines, turbine blades can disintegrate or lumps of ice build up on them and these projectiles can be flung several hundred meters, with resulting damage to anybody who is in the way. Guidelines on the Environmental Risk of Wind

Turbines in the Netherlands were issued in 2002 by Novem, in which an individual risk of 10^{-6} is established 144 m around a standard 2 MW turbine. However, the Department of Environment, Heritage and Local Government's planning guidelines on wind energy development, which were updated with the help of An Bord Pleanala in June 2006 state: "There are no specific safety considerations in relation to the operation of wind turbines".

One can request the parameters the Board applies to assessing risk and determining acceptance criteria. However, there is a refusal to answer and this has lead to an appeal being processed by the Commissioner for Environmental Information (CEI/10/0002).

Unfortunately one has again to draw a comparison with other jurisdictions. If we consider Germany they have since the mid-seventies defined the 'Stand der Technik', i.e. the state of technology, for high pressure gas pipelines in a series of technical regulations (TRGL). These were reviewed in the last few years and combined with those for long distance pipelines carrying oil and other chemicals (TRFL). If one looks at what was submitted by SEPIL to An Bord Pleanala in advance of the Oral Hearing, it is clearly the same as is required by the TRFL. This is perfectly logical, the EU Directives applicable, such as for Environmental Impact Assessment and Pressure Equipment, are identical. Indeed the European Standards relating to the technical details of design and construction of the pipe work are all the same, after all manufactures and engineers are applying tried and trusted solutions and the EN standards they are designing to are harmonised to the Directives. Unfortunately, when you look at the five days An Bord Pleanala spent discussing the 'Kill Zone' during the Oral Hearing, not only had this no basis in the legislation but it was the height of disrespect to the SEPIL representatives. Engineering is not about absolutes. It is the practical application of science relying on quantification, experience and the application of judgement. If society wants to benefit from the advantages of modern technology they have no rights to zero impact or zero risk. The legislation is clear in this regard.

If we take the position of Special Areas of Protection and Special Areas of Conservation under the Natura 2000 regulations, one would think given what is reported in the Media for Corrib and other projects, is that these areas are sacrosanct and untouchable. Over 40% of the Croatia will fall under Natura 2000 legislation as did the biogeographic region of Macaronesia in 2002 comprising 34% of the total land area of the Canary Islands, Azores and Madeira. It is not the purpose of this legislation to sterilise large tracts of land from human development but rather to ensure its conservation status.

EU Habitats Directive 92/43/EEC (as amended) is clear in Article 4 (4) that once a site is designated, the Member State shall as soon as possible and within six years at most, establish priorities in the light of the importance of the sites for maintenance and restoration, at a favourable conservation status of the a natural habitat or a species for the coherence of Natura 2000, and in the light of the threats of degradation or destruction to which those sites are exposed. Article 6 (1) further states that for special areas of conservation, Member States shall establish the necessary conservation measures involving, if need be, appropriate management plans specifically designed for the sites or integrated into other development plans, and appropriate statutory, administrative or contractual measures which correspond to the ecological requirements of the natural habitat types and the species present on the sites.

Article 6 (3) of the Habitats Directive says:

- "Any plan or project not directly connected with or necessary to the management of the site but **likely to have a significant effect thereon**, either individually or in combination with other plans or projects, shall be subject to **appropriate assessment** of its implications for the site in view of the site's conservation objectives. In the light of the conclusions of the assessment of the implications for the site and subject to the provisions of paragraph 4, the competent national authorities shall agree to the plan or project only after having ascertained that **it will not adversely affect the integrity of the site** concerned and, if appropriate, after having obtained the opinion of the general public".

An appropriate assessment is what the developer does in an environmental impact assessment procedure. The term integrity is not defined in the Directive but is understood as the maintenance of the ecological structure and function(s) of the site related to the qualifying features (equal to the species and habitat types for which the given site has been designated / classified, i.e. the conservation objectives). If the appropriate assessment has not revealed any significant adverse effect on any of the qualifying features of the any of the sites, there is no legal reason under the Habitats Directive to refuse to grant a permit.

Does Ireland establish these plans required under EU Legislation for these designated sites and present them at Oral Hearings? In reality precious few of these plans have been developed (http://www.npws.ie/en/PublicationsLiterature/ConservationManagementPlans/FullCPs/) so once again total confusion is generated. Broadhaven Bay, where the 9 km pipeline was proposed to skirt, is a Special Area of Conservation (SAC 000472), documented with a site synopsis on the website of the National Parks and Wildlife Service with a date of September 2001. Yet there is no published management plan for this Special Area of Conservation. Currently SEPIL are considering drilling a 5 km tunnel under the bay, this has significant costs, which will have to be carried by the project and for which 25% are carried by the taxpayer due to loss in revenue from the operation of the field.

Unfortunately there were other Environmental non-compliances with the application of the legislation occurring. When the wet gas from the well head is dehydrated, produced water occurs. The volume of this is small, about 4 m^3/day, equivalent in volume to the output of waste water from a small hotel. It is also treated to a very high standard before discharge. As was to be expected the Integrated Pollution Prevention and Control (IPPC) licensing process showed no impact from this discharge. However, as a gesture of 'goodwill' in order to achieve the financial settlement with the local fishermen the outfall was agreed to be relocated from 12.7 km to 80 km offshore into even deeper and more remote water. SEPIL then applied for a technical amendment to their IPPC license.

The Environmental Protection Agency (EPA) can use a technical amendment for:

- Making another change to a wording of a condition, which will have no significant effect on the environment.

However, in Corrib's case they insisted that SEPIL would have to reopen the IPPC licensing process and apply for a revised IPPC license. This is a time consuming and expensive exercise, not to mention requires further public participation with no doubt associated controversy. The EPA has since clarified to the media that it was justifying its stance based on a 'material change'. A 'material change' can be used under the Air Pollution Act of 1987 and the EPA Act of 1992 as a justification for a revision of a

license. Furthermore, what exactly constitutes a 'material change' is not defined in this legislation. However, the IPPC Directive (the original 1996 version is now codified as Directive 2008/1/EC) has always been clear (Article 12 (2)) in that Members States shall take the necessary measures to ensure that no substantial change planned by the operator is made without a permit issued in accordance with this Directive. Therefore the change has to be substantial, i.e. significant negative effects on human beings or the environment, before a new permit has to be issued.

In 2003 the EPA Act was updated by the Protection of the Environment Act to comply with conditions of the original 1996 Directive on Integrated Pollution Prevention and Control. The Section related to IPPC licensing was updated to include Section 90 4(b) relating to review of licenses:

- A license may be reviewed by the Agency if there is a proposal to make a substantial change to the nature or extent of an emission.

A 'material change' no longer applies to legislation governing IPPC licensing. Unless the EPA can demonstrate from the recent submission of the revised IPPC application to them that significant negative impacts on human beings or the environment have occurred from the relocation of the outfall, then clearly they have failed to implement the IPPC Directive properly in this case.

Ireland's Energy Policy

In October 2008 the Irish Government announced:

- *"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 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 scale at which wind energy is to be rolled out in Ireland (6,000 MW) is frightening. As the Irish Academy of Engineering stated in their June 2009 Submission to the Oireachtas Committee on Climate Change and Energy Security:

- "The All Island Grid Study is not a sufficient robust exercise on which to base Ireland's future energy policy".

- "Evidence based research, rather that ideology, should determine public energy policy".

They have clearly called for a halt to this enormous wind energy programme, the scale of which no other country is attempting. However, they are not being listened to; one disturbing aspect is the massive number of foreign equipment suppliers only too ready to cash in on this bonanza. After all the capital cost of the programme is over €30 billion.

One may well query the benefits of this programme and ask would the reductions in carbon dioxide have been achieved by other technical approaches. In reality theoretical carbon dioxide savings from wind energy have failed to materialise in other countries with large scale wind deployment. While one cannot say for certain

what the proposed programme will achieve it seems to be in the order of 4 million tonnes of carbon dioxide equivalent a year, about 5% of the State's output. There is presently considerably controversy over the environmental damage a tonne of carbon dioxide will do due to global warming. It could be €2 per tonne, but the highest figure that can be obtained from EU sources (ExternE) is €9 per tonne. This indicates that the environmental savings of this massive capital investment are in the region of €36 million per annum.

One may well ask why we have an administration which simply refuses to listen to the advice of its technical experts and implements massively expensive policies without any regard to costs and benefits. Without a doubt our closed form of governance in which the Administration is refusing to implement the Environmental Acquis is contributing to this. There is also the fact that the public is not being disseminated with details on the costs, benefits and alternatives to this programme, in many cases it is evident that false information is being disseminated. There is an appeal being processed by the Commissioner of Environmental Information (CEI/10/0003) related to the Industrial Development Authority (IDA) on this issue.

Wind farms are subject to the Environmental Impact Assessment Directive. Therefore a Strategic Environmental Assessment has to be produced by the State (Directive 2001/42/EC), which involves public participation and consideration of the impacts on the population, including socio-economic impacts and a detailed evaluation of the alternatives. One can request from the Department of Communications, Energy and Natural Resources the Strategic Environmental Assessment for the Wind Energy Programme and their cost / benefit data for the REFIT II tariffs for offshore wind energy and ocean energy, but to no avail. Currently the Commissioner for Environmental Information is processing an appeal with regard to this information (CEI/09/0016).

In July 2009 the Finnish Engineering Company Poyry published a very detailed report on the proposed UK and Irish wind energy programmes.

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

The report clearly demonstrated that the Wind Energy Programme in Ireland is going to drive up the cost of electricity generation in Ireland by at least 60% over the no wind situation, such a rise in electricity bills would amount to €2.9 billion each year. Further conclusions of this report relates to the complete inability to fund new thermal plants to meet EU forthcoming environmental standards and the lack of justification for interconnection between Britain and Ireland that cannot be seen as a magic bullet. Eirgrid, who have a €4 billion funding programme assigned under Government's wind energy programme, participated as a founding member on this study. However, they are refusing to comment on this report and this issue is subject to an appeal to the Commissioner for Environmental Information (CEI/10/0004).

Ireland's Waste Policy

There currently (April 2010) is a visible disagreement occurring between the Minister for Environment, Heritage and Local Government, John Gormley and Dublin City Council over the Poolbeg Incinerator. It is also abundantly clear that the Minister is vehemently opposed to incineration. This is unfortunate as Waste to Energy is being implemented in other Member States with great success, it is a win – win situation as not only is 50% of the heat and electricity classified as renewable but landfills, which produce methane (21 times more global warming than carbon dioxide) are eliminated. Note 2.5% of Ireland's greenhouse gas emissions originates from waste;

this could easily be eliminated at a fraction of the cost of the wind energy programme.

In order to comply with the Landfill Directive (1999/31/EC) regional waste plans were drawn up in the following two years, which involved public consultation. Minister Gormley has stated that these are not satisfactory, although due to the hold ups in getting the necessary thermal treatment plants in the plans constructed, Ireland has completely failed to meet the targets set for January 2010 in the Landfill Directive and will be unable to meet the later targets set for 2013. Severe fines from the EU are inevitable.

Waste disposal facilities are subject to the Environmental Impact Assessment Directive. However, no Strategic Environmental Assessment has been completed for Ireland's Waste Policy. Instead the Department of the Environment, Heritage and Local Government published an "International Review of Waste Management Policy", which was published on their website in mid November 2009: http://www.environ.ie/en/ . This document does not reflect EU Environmental Legislation; its sole purpose is to provide a justification for putting incineration technology out of business. It is completely disturbing to see the sums of money which are involved and the arbitrary manner in which levies have been proposed. An overriding principle of EU Legislation is 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".

It is clear if we consider the non-greenhouse gas (non-GHG) related taxes proposed by this International Review for the common air pollutants sulphur dioxide (SO_2) and nitrogen oxides (NOx) emitted from incineration processes, then clearly they exceed the maximum values established under the EU's Clean Air for Europe (CAFÉ) programme for damage to the environment. Furthermore both sulphur dioxide and nitrogen oxides are to be found with practically all combustion sources, such as heating systems or vehicle exhausts, it does not matter to the individual in terms of impact whether they are derived from waste incineration or the neighbour's fire place. If we consider that the National Ceiling Emission Directive (2001/81/EC) then the target set for 2010 for sulphur dioxide emissions from the Irish State is 42 kilotonnes and for NOx 65 kilotonnes. If we apply the non-greenhouse gas related taxes above to these emissions occurring from all sources then the resulting bill would be €0.73 billion for sulphur dioxide and €0.88 billion for NOx. This would be a completely excessive burden for the Irish consumer to carry.

EU and National Legislation does not require the Irish consumer to carry this financial burden. The principle of proportionality is that zero emissions are not sought for but that emissions are reduced to an optimal balance between economic and environmental goals. Incinerators are regulated by Directive 2000/76/EC which sets stringent emission limit values for a full range of air pollutants. In complying with these values incinerators have already met the balance between economic and environmental goals, as defined by Best Available Techniques (Directive 2008/1/EC on Integrated Pollution Prevention and Control). Additional levies on the remaining emissions as proposed by the International Review on Waste Management are not in compliance with this legislation and the principle of proportionality. Their only justification therefore is politics.

There were other faults with this International Review. For instance recommendations that bottom ash should be classified as hazardous when clearly it has been established in other Member States that this is not so (German LAGA-Mitteilung 19). Furthermore Section 8.1 of the International Review relating to Greenhouse Gas Emissions and Environmental Benefits does not state the benefits that could incur with regard to greenhouse gases if the Irish State, like the overwhelming majority of Member States that have met and exceeded the targets in the Landfill Directive, implemented incineration (Waste to Energy) as was included in the original Regional Waste Management Plans.

The Economic and Social Research Institute (ESRI) even produced on behalf of Dublin City Council a report on "An Economic Approach to Municipal Waste Management in Ireland", which was released at the end of February 2009. It noted the "international review must be considered a failure in respect of its proposals for setting residual waste levies, per capita targets for reduction in residual waste and guidance in the appropriate mix of waste technologies".

Unfortunately none of this is being taken aboard and there is now a Waste Bill published, which will allow the Minister to set a levy of €120 per tonne on waste going to incineration plants, i.e. put them out of business. No doubt this will be rushed through the Dail (parliament) without proper scrutiny.

Just like Corrib it is also highly disturbing how An Bord Pleanala and the EPA are treating incineration projects. In early 2009 the N7 Resource Recovery Project was refused planning permission by An Bord Pleanala (PL 06S.PA0006):

- "*The Board is not satisfied that sufficiently accurate data has been used in the modelling or that the models can reliably predict the effect of process emissions on ambient air quality close to the proposed stack. The proposed development would constitute an unacceptable risk of pollution of the environment and would, therefore, be unacceptable on environmental grounds having regard to the proper planning and sustainable development of the area".*

However, the competent authority for matters related to environmental pollution and emissions from such a facility is the EPA. Indeed if one considers An Bord Pleanala's own 2007 guidance on Oral Hearings it states:

"The Environmental Protection Agency (EPA) is the body charged primarily with controlling emissions in Ireland. The Board is required, when considering an application for planning permission or approval for development which comprises or is for the purpose of an activity for which an integrated pollution control licence or a waste licence is required from the EPA, to take into consideration that the control of emissions arising from the activity, is a function of the EPA".

These dispersion models are used internationally and have been developed and proven over thirty years. We know that their predictions are conservative; this has even been proven in cases in Ireland where the models predicted exceedences of the air quality standards, but actual continuous monitoring proved otherwise. Just like Corrib there was a failure according to Directive 2003/35/EC in that the main reports and advice issued to the competent authority have to be made available to the public in advance of the hearing. This didn't happen. Furthermore the Environmental Impact Assessment Directive is very clear that the competent authority, in this case An Bord Pleanala, has to make available the main reasons and considerations on which the decision is based. If you look at the above decision they were 'not satisfied' with the modelling, which was done in accordance with the relevant guidance of that time. Yet

not a single fact or figure was given to justify this position. If we go back to the legislation, the 1992 EPA Act is very clear in Section 50 relating to the Functions of the Agency, which include:

- "The provision of support and advisory services for the purposes of environmental protection to local authorities and other public authorities in relation to the performance of any function of those authorities".

Yet here we have a developer who has complied with all the requirements being accused of generating an "*unacceptable risk of pollution of the environment"* without any supporting information being available to justify that decision and the EPA, whose function it is to provide this information, being nowhere to be seen or heard. However, what is even more disturbing is that in late 2009 the same EPA produced a Guidance Note on Air Dispersion Modelling from Industrial Installations (AG4) for public consultation. This clearly demonstrated what we already all knew, i.e. these models work well and their predictions are on the conservative side. However, too late for the N7 Resource Recovery Project team, who not only lost all the money they had put into the project, but had An Bord Pleanala slap a charge of €142,380 against them for the cost of the whole 'Oral Hearing' they had to endure as part of the Irish democratic process.

Still it hasn't stopped here, if we look at the Indaver application for a combined municipal and hazardous waste incineration facility in Cork (PL04 .PA0010), this has been in and out of Oral Hearings, etc. Amazingly if one consults the Irish Times of 22nd January one can find:

"Opponents of a proposed €150 million twin incinerator development for Ringaskiddy in Cork Harbour have welcomed the decision by An Bord Pleanála following an oral hearing to refuse planning permission for part of the project dealing with municipal waste.

Indaver Ireland said that it remained confident of progressing the project after Bord Pleanála indicated that it was considering granting permission for both a hazardous waste incinerator and a transfer station if certain concerns were addressed.

Regarding the municipal waste incinerator, An Bord Pleanála had ruled that planning was not appropriate "at this time, having regard to both layout and limited size of the site and current strategy of the Cork local authorities in respect of waste management," he said".

Yet there is not a single mention of any of this on the An Bord Pleanala website. This is highly disturbing and also occurred with regard to the Corrib Oral Hearing, i.e. regulation through the media rather than by official channels. Furthermore the regional waste management plan developed for Cork clearly called for thermal treatment. Now the Local Authority there has 'changed its mind' to suit political consideration and the developer is going to be refused by An Bord Pleanala based on an arbitrary waste management philosophy, which has not followed any proper procedures or public consultation and is not in compliance with the legislation on the Statute Books.

Finally

It is clear that the Irish State intends to continue to operate a system of closed governance in defiance of the EU Environmental Acquis. It is also clear that it has repeatedly stepped outside of the legislative basis of the Environmental Acquis to

implement a ‘Green Economy’. The costs associated with these measures, such as in rapidly increasing electricity and waste charges, are a major disincentive to the conduct of business here in Ireland. However, what is most worrying is that the regulatory approval system has been grossly compromised to reach political objectives and can now be considered no better than a lottery. Ireland unfortunately stands out as an example of where there are “political risks to project completion” as the legislation which is being implemented in other Member States does not apply.

Finally delivering sophisticated projects, such as Corrib and Indaver’s Waste to Energy plant, takes considerable skill and expertise. It is clear to those who do so now that not only is their contribution to Irish Society not respected, but there is no hesitation to operate outside the legislative basis in a manner which is detrimental to their employment if short term political gain can be achieved. This is unacceptable and has to be addressed if Ireland’s industrial development is not to come to a halt.

Pat Swords BE CEng FIChemE CEnv MIEMA