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cc

bcc

Subject "C/54" Email 12

From: ENV CHAP

Sent: Tuesday, April 26, 2011 10:04 AM

To: LONG Antoinette (ENV); BURSA Dorota Anna (ENV)

Cc: ENV CHAP A

Subject: FW: CHAP (2010)00645 Aarhus Convention and Public Participation in Decision-making in Ireland

CHAP (2010) 00645

From: Pat Swords [mailto:pat.swords.chemeng@gmail.com]

Sent: Thursday, April 21, 2011 10:08 PM

To: ENV CHAP

Cc: lawevents@ucc.ie

Subject: CHAP (2010)00645 Aarhus Convention and Public Participation in Decision-making in Ireland

To: CHAP (2010) 00645

From: Pat Swords BE CEng FIChemE CEnv MIEMA

Date: 21-4-2010

Due to the concerns of the UNECE, the position of Ireland with regard to the Aarhus Convention was clarified in 2007:

- <http://www.unece.org/env/pp/compliance/C2006-17/Response/ECresponseAddl2007.11.21e.doc>

Without doubt this is a highly unusual situation, it that while the EU is a Party to the Convention, Ireland has not only failed to ratify the Convention, but is refusing to reform its legal system to comply with the requirements of Pillar III of the Convention and the EU Directive, 2003/35/EC, which gives legal effect to this requirement. Note: Recital 7 of Decision 2005/370 states: "The objective of the Aarhus Convention, as set forth in its Article 1 thereof, is consistent with the objectives of the Community's environmental policy, listed in Article 174 of the Treaty, pursuant to which the Community, which shares competence with its Member States, has already adopted a comprehensive set of legislation which is evolving and contributes to the achievement of the objective of the Convention, not only by its own institutions, but also by public authorities in its Member States". The net result is that a breach by Ireland of the Directives is, by virtue of the EU's adherence to the Convention,

and the integration of the Convention into EU law, a breach by the EU of the Convention.

1.1.1 Public Participation in Policy Development – the Climate Change Response Bill

The Climate Change Response Bill is a damning indictment of how policies are developed and public participation conducted in Ireland. This Bill, driven in the main by the junior partner in the coalition Government, the Green Party^[1], was published on the 23rd December 2010 with a consultation period until 28th January 2011^[2].

As I stated in my Submission to the consultation: The Climate Change Response Bill is a National Policy to provide for plan or programmes for reductions in greenhouse gases. The Bill clearly prescribes mandatory targets for these plans or programmes and as is stated in the Regulatory Impact Assessment “it sets a statutory basis for key national policies and principles to underpin a progressive course of transition to a low-carbon future”. The Bill therefore falls under the Definition set in Section 2 (a) of Directive 2001/42/EC for a ‘plan or programme’. As these mandatory targets for greenhouse gas reductions will have a major impact on agriculture, forestry, energy, industry, transport, tourism, town and country planning and land use, a Strategic Environmental Assessment is required according to Article 2 (2) of the Directive.

On the 26th December, as no Environmental Report in accordance with Directive 2001/42/EC was posted on the website of the Department of the Environment, Heritage and Local Government, I submitted an Access to Information on the Environment Request (AIE) under S.I. No. 133 of 2007, which implements Directive 2003/4/EC (Pillar I of Aarhus Convention), requesting a copy of this Environmental Report. This AIE request was received and acknowledged by the Department of the Environment, Heritage and Local Government as AIE/2011/002. A reply was received on the 24th January 2011, which demonstrated that no Strategic Environmental Assessment had been completed.

The Aarhus Convention: An Implementation Guide^[3] is clear with regard to Article 5 paragraph 7 (a) that:

- “If a party considers that certain facts and analyses of facts are relevant and important in framing major environmental policy proposals, it must publish them, parties have the liberty to decide which facts and analyses of facts are relevant and important. In implementing this provision, Parties can consider facts such as water and air quality data, natural resource use statistics, etc. and analyses of facts, such as cost-benefit analyses, environmental impact assessments,

and other analytical information used in framing proposals and decisions”.

- “Paragraph 7 (a) requires Parties to publish background information underlying major policy proposals, and thus contribute to effective public participation in the development of environmental policies. This is information that the Party considers “relevant and important” in framing policy proposals. Since article 7 provides for public participation during the preparation of policies, article 5, paragraph 7, is intended to ensure that the public will be properly equipped with the information necessary to take advantage of this opportunity”.

Article 7 on Public Participation Concerning Plans, Programmes and Policies Relating to the Environment states that:

- “Each party shall make appropriate practical and / or other provisions for the public to participate during the preparation of plans and programmes relating to the environment, within a transparent and fair framework, having provided the necessary information to the public. Within this framework, article 6, paragraphs 3, 4 and 8, shall be applied. The public which may participate shall be identified by the relevant public authority, taking into account the objectives of this Convention. To the extent appropriate, each Party shall endeavour to provide opportunities for public participation in the preparation of policies relating to the environment”.

Note: Article 6, paragraphs 3, 4 and 8 states:

- “The public participation procedures shall include reasonable time-frames for the different phases, allowing sufficient time for informing the public in accordance with paragraph 2 above and for the public to prepare and participate effectively during the environmental decision-making”.
- “Each party shall provide for early public participation, when all options are open and effective public participation can take place”.
- “Each Party shall ensure that in the decision due account is taken of the outcome of the public participation”.

The Aarhus Convention: An Implementation Guide states:

- “While the Convention does not oblige Parties to undertake assessments, a legal basis for the consideration of the environmental aspects of plans, programmes and policies is a prerequisite for the application of article 7. Thus, proper public participation procedures in the context of

Strategic Environmental Assessment is one method of implementing article 7. Strategic Environmental Assessment provides public authorities with a process for integrating the consideration of environmental impacts into the development of plans, programme and policies. It is, therefore, one possible implementation method that would apply to both parts of article 7 – the provisions covering public participation in plans and programmes, and the provision covering public participation in policies”.

If we consider the documentation prepared for the consultation, then the only one addressing the above requirements is the Regulatory Impact Assessment, which states that the:

- “Objective of the Climate Change Response Bill 2010 is to provide a robust and transparent legislative context and underpinning for a new national medium and longer term vision on transition to a low-carbon, climate resilient and environmentally sustainable society”.

To put it mildly the quality of information in this document was derisory. It simply did not provide the necessary information to the public with regard to the requirements of the Aarhus Convention above. There were no facts or figures, the ‘qualitative assessments’ were based around ‘buzz words’, nothing was referenced to technical reports or published assessments.

The reality of the situation is that the Republic of Ireland has banned the generation of electricity from nuclear power under Section 18 (6) of the 1999 Electricity Regulation Act. As regards the Climate Change Response Bill, this Regulatory measure will see reductions in the use of fossil fuel starting at 2.5% per year and rising to a staggering 80% by 2050. Let us not forget that the EU target for Ireland for 2020 is only 16% of our energy supply to be sourced from renewable sources. This is going to be a major challenge to achieve. As regards Government Policy to generate 40% of electricity from renewable sources (37% from wind energy), there are huge technical and economic constraints related to this programme, which will be discussed in the Reply to UNECE under the Aarhus Convention Compliance Committee ACCC/C/2010/54:

- <http://www.unece.org/env/pp/compliance/Compliance%20Committee/54TableEU.htm>

One can only conclude: What on earth are the Irish population going to use to heat their homes, drive their transport, fuel their industry, etc? Certainly the documentation provided on the consultation process doesn’t even acknowledge that this might be an issue. Effects such as these on the population, who will freeze in winter, have little or no transportation, no effective manufacturing industry to provide

employment, are 'relatively important' with regard to the environment they will find around them and need to be addressed in the environmental assessment.

Furthermore what exactly is the natural environment going to be like with or without the implementation of the policy? This too is a mandatory part of the assessment. One could simply point out that global emissions of greenhouse gas emissions are about 40 billion tonnes a year, of which Ireland is responsible for about 63 million tonnes, or less than 0.16%. As the greenhouse gas effect is global and the major countries are not going to reduce their emissions by nearly the same percentage as is proposed in the Climate Change Response Bill, one can clearly point out that the environment will not be changed at all by this measure; it was a token political gesture.

Furthermore with regard to anthropogenic climate change, the reports produced by the United Nations Intergovernmental Panel on Climate Change (IPCC) are not just based on bad scientific work, they are based on falsification of data, such as the inaccuracies of the 'hockey stick' graph on temperature trends or the major inaccuracies in the calculation methods used in the computer simulations^[4]. Clearly this policy has its origins in political decisions rather than sound evidence based data. However, for the implementation of a policy, plan or programme on the environment, the evolution of the environment without implementation of the measure has to be assessed. This simply had not been completed; the public was not being provided with accurate information on the environment in this regard, so that they could participate in an informed manner (Pillar I and II of the Aarhus Convention).

Neither was it adequate to seek refuge with regard to failure to complete the above legal requirement with regard to assessment by insisting that these targets derived from the EU. Neither does DG Clima at the European Commission provide information related to the above legal requirements^[5]. Indeed the publications on their website can be charitably described as 'journalistic' in nature, such as pictures of children on skis playing on green pastures, with comments that "without action now skiing holidays could be a thing of the past for future generations"^[6]. Which just flies in the face of the reality of the last four skiing seasons in Europe, which were exceptional.

One could also say the performance of Jill Duggan, National Expert on Carbon Markets and Climate Change at European Commission, on Australian talk show radio^[7] on 9th March was a complete and utter embarrassment. As the Australian presenter later wrote; the two basic questions with any purchase are. How much does it cost? Will it do the job? Jill hadn't a clue on how much the EU climate change targets are going to cost and what effect, if any, they are going to have on global temperatures. In this manner she was simply reflecting the

situation that such assessments have never been completed and the policy is based solely on political considerations. Indeed on the 28th January 2008 we had the EU Commissioner for the Environment stating that climate change measures will cost 0.04 to 0.06% of GDP, while on the same day the President of the Commission was stating that they would cost 0.5% of GDP[8].

Requirement of the Convention	Actual situation
<p>Article 5 paragraph 7 (a) requires that each party shall publish the facts and analyses of facts which it considers relevant and important in framing major environmental policy proposals.</p> <p>Article 7 requires that each party shall make appropriate practical and / or other provisions for the public to participate during the preparation of plans and programmes relating to the environment, within a transparent and fair framework, having provided the necessary information to the public.</p>	<p>Under national legislation the Climate Change Response Bill, the scope of which would have had massive environmental and economic impacts on the country, should have been subject to a Strategic Environmental Assessment as part of the national implementation of Directive 2001/42/EC.</p> <p>Instead of a structured Environmental Report what was produced was an appalling Regulatory Impact Assessment, which did not fulfil the requirements of Article 5 paragraph 7 (a) of the Convention.</p>

After the Climate Change Consultation closed a further Access to Information on the Environment request was submitted to the Department of Environment, Heritage and Local Government. This comprised:

- The procedures and details related to exactly how the Irish Administration will comply with Pillar II of the Aarhus Convention in the preparation of this climate change legislation, i.e. “appropriate taking account of the public participation”.
- That in accordance with the dissemination requirements of Directive 2003/4/EC, the Submissions received should be posted on the website. In other words so that the public could check on how due account of the public participation exercise was completed.

On the 1st March 2011 I received a reply (AIE 2011/006[9]). With regard to the first component, the reply was: “Article 8 of the Aarhus Convention requires that in the making of executive regulations and / or generally binding applicable legally binding normative instruments that effective participation must be promoted and that a number of steps should be taken in this regard. The Department initiated compliance with these requirements by:

1. Opening a public consultation for a period of 5 weeks.
2. Placing a notice of public consultation advertisement in 3 national newspapers and publishing said notice on the

Department's website. This notice informed interested parties of the procedures for making responses.

3. Allowing all interested parties to respond by post or by e-mail, either individually or through representative organisations”.

As regards the second part of the request the reply was: “The Department is not putting the submissions received on its website. As it was never the intention to do so, clearance from respondents was not sought or obtained. A summary note of the submissions received in response to the public consultation is available on this Department's website (www.environ.ie) and a copy is included with this letter. Copies of individual responses to the consultation are available, free of charge, upon request from the Department. As part of the regulatory impact analysis the Department will be updating the existing Regulatory Impact Assessment to take account of the responses received and this will be available on the website in due course”.

An Internal Review of the above was requested given that points 1 to 3 in the attached response did not address the issue raised in the first question. As regards the second question I highlighted the position of the UNECE on electronic communication^[10]. The reply to this Internal Review and its justification was most revealing, see Attachment. In summary the reviewer confirmed the position of the initial decision maker. However, there were several interesting points raised.

Firstly the only record relating to Pillar II of the Convention and this public participation was the summary note available on the public consultation, see above, i.e. no other records had been developed with respect to taking account of the public participation. Secondly, with regard to the main factors taken into account in reaching the decision on the internal review, it was clearly stated in the first paragraph that:

- “Ireland has not ratified the Aarhus Convention and it is understood that the Convention does not have direct effect in Ireland. It is understood that the access to information elements dealt with in the Convention are implemented in Ireland by the Access to Information on the Environment (AIE) Regulations 2007. Therefore, while this was not specified in the original decision, references to the provisions of the Convention *per se* in the original application and review request would not appear relevant in deciding the case which must, accordingly, be decided purely in the context of the specific provisions of the AIE Regulations”.

Furthermore it was the Internal Reviewer's interpretation that the matters address in my Request, in relation to taking account of the

public participation, did not fall within the definition of “environmental information”. If we consider Article 2 of the Aarhus Convention, then the climate change measures proposed would clearly have an impact on the state of the elements of the environment. Furthermore the public participation process in relation to the development of this legislation, clearly belonged to an environmental policy, which would affect or likely to affect the elements of the environment.

One could also point out that Article 3 paragraph 1 of the Convention requires that each Party shall take the necessary measures to maintain a clear, transparent and consistent framework to implement the provisions of the Convention. That a Principal Officer in the Department of Environment, Heritage and Local Government would be writing this form of documentation, clearly demonstrates that there has been a complete systems failure with regard to the legally binding requirements under the Convention.

Finally the Aarhus Convention – An Implementation Guide is clear in that the requirement that Parties ensure that “due account is taken of the outcome of public participation” implies that there must be a legal basis to take environmental considerations into account in plans, programmes and policies. The Guide further states “the requirement to take the outcome of public participation into account further points to the need to establish a system for evaluation of comments, which may be satisfied through the establishment of national Strategic Environmental Assessment procedures”. Clearly with regard to the Climate Change Response Bill, as will be demonstrated again in the Reply to UNECE, we instead have a system where there is a failure to complete the necessary information requirements for the public participation exercise, which is then reduced to the collection of submissions, which are then essentially ignored in the final decision making process. As others, notably the European Environmental Bureau, have pointed out, public participation in Ireland is like a charade^[11].

Requirement of the Convention	Actual situation
Article 7 / 8 of the Convention requires that “appropriate taking account of the public participation”	The Climate Change Response Bill consultation, as will be clear with reference to other consultation exercises in the following Sections of the Reply to the UNECE, were merely the conducting of a public participation exercise rather than the ‘taking account’ of the public participation exercise.

Requirement of the Convention	Actual situation
Article 3 of the Convention requires a clear, transparent and consistent framework to	The EU ratified the Convention in February 2005. In April 2011, following a public participation

implement the provisions of the Convention.

exercise which was conducted clearly outside the principles of the Convention, we have a situation where a principal officer in the Irish Department of the Environment is responding to a legal request and stating that the Convention has no direct effect.

[1] <http://www.eamonryan.ie/2010/12/23/climate-change-response-bill-published/>

[2]

<http://www.environ.ie/en/Environment/Atmosphere/ClimateChange/ClimateChangeResponseBill2010Consultation/>

[3] <http://www.unece.org/env/pp/acig.pdf>

[4] In her speech in Warsaw in June 2010 the EU Commissioner for Climate Action stated: “The Intergovernmental Panel on Climate Change, which brings together hundreds of the world’s leading scientists, has projected that without more action to tackle greenhouse gas emissions, we are most likely to see further warming of between 1.8 and 4 degrees this century. In the worst case scenario the global temperature could increase by over 6°C”.

<http://europa.eu/rapid/pressReleasesAction.do?reference=SPEECH/10/321&format=HTML&aged=1&language=EN&guiLanguage=en> The reality of the situation is that global temperatures are simply not increasing at the rate projected by these computer programmes, indeed they are not increasing at all. From a scientific perspective the greenhouse effect due to carbon dioxide is completely dwarfed by that of water vapour in the atmosphere. The IPCC models are based on a ‘feed forward’ assumption, i.e. increasing carbon dioxide levels will raise temperatures and evaporate more water vapour, hence accelerating the effect. This has been demonstrated to be a false assumption that is not supported by actual measurements.

[5] http://ec.europa.eu/clima/publications/index_en.htm

[6] <http://ec.europa.eu/publications/booklets/move/70/en.pdf>

[7] Melbourne Talk Radio. The Steve Price Breakfast Show. 9th March, 2011
~8:20am

[8] http://www.europa-eu-un.org/articles/en/article_7673_en.htm

http://www.europa-eu-un.org/articles/en/article_7670_en.htm

[9] Given that in two months the Department had only processed six such requests, two of which were from myself, is clear indication of the appalling poor awareness among the citizens of their rights under these regulations.

[10]

<http://www.unece.org/env/documents/2005/pp/ece/ece.mp.pp.2005.2.add.4.e.pdf>

[11] See page 24 of:

http://www.participate.org/index.php?option=com_jdownloads&Itemid=62&task

[=finish&cid=35&catid=4](#)



Internal Review Decision on Climate Change Response Bill Submission AIE-2011-006 12-4-2010.pdf