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12.07.2011 09:52

To <Public.Participation@unece.org>

cc

bcc

Subject "C/54" Email 45

From: FEDER Maja Dorota (ENV)

Sent: Monday, December 06, 2010 11:51 AM

To: BURSA Dorota Anna (ENV)

Cc: LONG Antoinette (ENV)

Subject: FW: Systematic Maladministration in Ireland / Failure to Comply with EU Legislation - What Next?

Dorota,

Could you please upload the docs in CHAP (2010) 00645.
Many thanks in advance,

Maja

Maja FEDER

Office of Mr Brakeland

Unit A.2 - Compliance promotion, governance & legal issues

European Commission - DG Environment

BU-9 1/03

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From: ENV CHAP

Sent: Monday, December 06, 2010 8:41 AM

Cc: FEDER Maja Dorota (ENV); ENV CHAP A

Subject: FW: Systematic Maladministration in Ireland / Failure to Comply with EU Legislation - What Next?

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

Sent: Saturday, December 04, 2010 8:33 PM

To: GBFI_DV; CASHMAN Liam (ENV); ENV CHAP; Euro-Ombudsman (EP); OLAF COURRIER; publicaffairs@imf.org

Cc: Martin,David; info@indaver.ie; office.dublin@trade.gov; info; info@ibec.ie; iae; Luc Rivet; client.service@enterprise-ireland.com; info@ida.ie; privateoffice@taoiseach.gov.ie; MINISTER; Minister Ryan; Customer Service;

info@ag.irlgov.ie; fiona.marshall; Aphrodite Smagadi

Subject: Systematic Maladministration in Ireland / Failure to Comply with EU Legislation - What Next?

To: Garda Bureau of Fraud Investigation (FB 11.242/09) /
Liam-Joseph Cashman EU Commission, DG Environment, Unit
ENV A.2, Compliance Promotion, Governance and Legal Issues /
CHAP (2010) 00645 / EU Ombudsman 2587-2009-JF / OLAF / IMF

CC: Covanta, Indaver, US Commercial Services in Ireland,
American Chamber of Commerce in Ireland, IBEC, Irish Academy
of Engineering, Luc Rivet (European Platform Against Wind Farms
– Belgium), Various Irish Administrative Bodies. UNECE

Date: 4-12-2010

The situation in Ireland is very, very clear. Policies, particularly those related to energy and waste are developed outside of the legislative basis to suit populist political and personal agendas; see Attachment 1 and supporting information. The market place is then made available to those who are favoured by the political process; those who are not considered as useful to the political and personal agendas are obstructed and / or denied the right to operate. Huge losses are occurring in relation to Ireland no longer being considered a suitable location for industrial development, and due to the squandering of billions of Euros on completely substandard infrastructure.

It is distressing that the limited number of technical specialists, who are experienced in developing energy infrastructure and the correct application of EU Legislation (Environmental Acquis), are being deliberately shunted aside and that instead of the Administration reacting to rational technical input, there is a programme of active and systematic dissemination of false information to the general public to support these programmes.

In October 2008 the 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 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.”

- <http://sustainable-energy-ireland.circulator.ie/Content.aspx?ID=5680>

The statement that a 40% penetration, i.e. 37% of Ireland's electricity being generated by wind energy, is technically possible is strongly disputed by the technical community. See for example the Submission by the Irish Academy of Energy referenced in Attachment 28. Regardless of whether it is or isn't technically feasible, or even the presence of two EU Directives on Renewable Energy (2001/77/EC and 2009/28/EC), neither Irish nor EU officials have the legal authority to establish the programme that is now in place with regard to over €30 billion in investment in wind energy and related infrastructure. Simply put the fundamentals of EU Legislation, such as Principle of Proportionality, Aarhus Convention on Access to Information, Public Participation in Decision Making and Access to Justice in Environmental Matters, and the aims of the relevant Directives have to be adhered to. This clearly has not happened. No cost / benefit studies have been completed, no alternatives considered, no Strategic Environmental Assessment prepared and disseminated, simply a business model developed to ensure that wind energy technology suppliers and operators receive a generous financial reward (see Attachments 14 and 15).

The constant dissemination of deliberate false information related to this programme is distressing, such as the statement above: *“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”*. Engineers fully realise that as more wind turbines are put on the grid, the more unstable the grid becomes and the essential thermal plants operate more ineffectively in stop / start, variable mode

rather than under continuous load. This 'driving in urban cycle mode' rather than 'motorway cruising' burns more fuel. Indeed international experience is now showing with grids with large base load generation and about 10% penetration by wind energy (the current situation in Ireland), that more carbon dioxide is being discharged than if there were no wind turbines on the grid. We could of course carry additional investment to the €30 billion, as highlighted by the Minister "*development of flexible generating plant on the electricity system*", but even then by the time we have reached about 23% penetration, we would have more carbon dioxide emissions than if there were no turbines installed. So why do we have a policy of 37% related to the maximum feasible technical capacity?

The answer to this is blatant maladministration resulting from the willingness of senior officials, both elected and unelected, to operate outside of the legislation in support of populist agendas. Clearly they have so far been given 'Carte Blanche' to do so (e.g. Attachments 34 to 40), with total disregard to the rights and welfare of the citizens. Unfortunately the citizens are clearly not even in a position to realise this is happening, they are repeatedly being disseminated false information, a non-compliance with Articles 7 and 8(1) of Directive 2003/4/EC (Pillar I of Aarhus on Access to Information). If we take for instance the effectiveness related to carbon dioxide savings as discussed above, then Page 28 of the Renewable Energy 2010 Update (see Attachment 20) states 1.3 million tonnes of savings are occurring from wind energy, then this unfortunately is a false statement. This is even admitted in Appendix 1, where the fact that thermal plants have to run more inefficiently is simply ignored. One can request information to get to the bottom of this, see Attachments 21 to 25, but there is just a 'run around' that has to be teased out. Indeed if a technology sector is not considered useful to the populist agenda, false information about it is simply printed in official Government Policy Documentation (Attachments 14 and 15) and disseminated in repeated statements to the media.

The whole thing is like a juggernaut out of control, now we have more billions of Euros to be approved for offshore renewable energy, a subset of the renewable energy programme, which as has been established was never been subject to proper Strategic Environmental Assessment, cost / benefit analysis or consideration of alternatives. The Strategic Environmental Assessment now available for public consultation on the offshore component, simply bypassed the necessary EU legislation required for Public Participation (Pillar II of Aarhus) in key areas of addressing

environmental objectives, alternatives considered and the financial cost burden on the population, such as loss of employment due to an uncompetitive economy, fuel poverty, etc. See Attachments 16 and 17.

Instead the citizen is clearly told that this is a '*wonderful economic opportunity*'. A wonderful economic opportunity indeed for suppliers of wind turbines and accessories, but really do the environmental effects of this whole renewable energy programme, which most likely are overwhelming negative, justify every man, woman and child in the country forking out nearly €1,000 each to finance the capital investment? Maybe they just don't know? International experience has shown that every job created in wind energy has to be subsidised to over €100,000 per year and destroys two jobs in the manufacturing sector due to loss in competitiveness. No such analysis has been completed in Ireland and the citizen is instead disseminated false information on how essential and attractive this programme is, see for instance Attachments 18, 19, 26 and 27.

Neither is there any value or consideration of proportionality assigned to this programme, a tonne of carbon dioxide savings is after all only equivalent to an environmental damage cost of a maximum of €9 per tonne. Could sustainable carbon dioxide reductions be achieved at a fraction of the cost utilising some of the other 10 technologies listed as renewable energy under the terms of the Directive? Indeed they could, in particular by the application of waste to energy. Attachments 2 to 13 clearly show the illegal manner in which the implementation of this technology sector is being continuously obstructed by the Irish Administration. Indeed I have absolutely no hesitation in stating that what is documented is evidence of clear corruption within the terms of European and National anti-corruption legislation, not to mention a complete non-compliance with Pillars I and II of the Aarhus Convention.

Where do we go from here? The Garda Bureau of Fraud Investigation established a file on this in my name over a year ago. Everybody in Ireland knew that those engaged in white collar crime here did not have to fear prosecution, particular when it involved public officials. Now everybody on the planet knows. I have yet to receive any indication on what will be done with the information submitted, everybody I have explained the situation to, is convinced I never will. Indeed I have never been informed on what is required to progress the case and what the relevant procedures are. Presumably it depends on the choices made by the individual administrators?

The EU Commission, DG Environment / DG Energy clearly do not want to address this issue, even though it has been extensively documented for over a year, see Attachments 29 to 32, with regard to the case being processed by EU Ombudsman. As they continue to fail to address it, I went over yesterday at my own time and expense to meet with them in Brussels (Liam Cashman DG.ENV.A2, Stephanos Ampatzis DG.ENV.A3, Gerda Postelmans DG.ENV.F2, Tom Howes DG.Energy.C1, Antoinette Long DG.ENV.A2), see Agenda in Attachment 41. To put it mildly it was disappointing. Clearly not only have they failed to comply with the Ombudsman's request for information, but they also failed to demonstrate the courtesy to prepare for the meeting, it was clearly obvious that the content of the extensive documentation submitted on the complaint procedure CHAP (2010) 00645 (Attachment 42) had not been reviewed.

There is clearly no willingness to enforce EU Environmental Legislation in Ireland. At my own time and expense, I would have to document a case that would stand scrutiny of the legal team of the Irish State Solicitor (Attorney General). Then it is their personal choice as to whether it would be selected to be progressed through the European Court. However, what really was most unacceptable were the closing remarks of Liam Cashman related to the Aarhus Convention. While the ratification of this is indeed a matter for the Irish State, to state the Convention applies in relation to Community Law in the Irish Republic is plainly false and is an indication of an Administration, which is in complete denial about the true situation which prevails. Firstly the EU itself has broken the terms of the convention with regard to approval of funding mechanism and direct funding (hence OLAF) for renewable energy in Ireland, see Attachment 33 on the Communication to the UNECE Aarhus Convention Compliance Committee, which is due to be reviewed in mid-December.

Secondly Pillars I and II of the Convention are being constantly abused by Irish Administration in matters which related to Community Law, see above. Thirdly there is no effective Access to Justice in Ireland, I can for instance prepare a legal case, see Attachment 43, but how can I afford a five figure sum per day, for an unknown number of days, in front of judges who clearly are not trained or competent in the subject matter and are renowned for their capricious nature? So the abuses of legislation just keep rolling on.

As I made it clear at the meeting yesterday, myself and others who

have assisted me are well versed in projects in industrial development ranging from €50 to €500 million. We clearly see what is happening. Personally I have made it clear that I would not recommend a developer to engage in a development project in Ireland, unless he was prepared for a regulatory system that regularly operates outside of EU and National Legislation, an abusive media that has no effective controls on it and finally for the fact that he may have to undergo a lengthy, horribly expensive and unpredictable legal process. I've seen major job losses and losses in career opportunities in Ireland. Neither am I willing to work in Ireland to finance pointless and illegal infrastructure developments in the area of energy and waste, money which can only get spent once and should be spent on essential services, such as education, health, etc.

I am not going to continue to prepare documentation at my own time and expense to be used at an administrator's whim to potentially rectify the horrendous situation which now prevails, which should never have been allowed develop if administrators operated within the law. Neither am I going to finance court case at my own expense. As I made it clear yesterday – Vancouver is a nice place.

So it is now over to others to do something about it, if at all.

Pat Swords BE CEng FICChemE CEnv MIEMA

Biography: Pat Swords is a Fellow of the Institution of Chemical Engineers and a Chartered Environmentalist. Since graduation from University College Dublin in 1986 Pat has worked in developing the high technology manufacturing industry in Ireland. His work experience has also included projects in over a dozen other countries throughout Europe and North America. Since 1999 he has worked extensively on EU Technical Aid Projects in Central and Eastern Europe helping to implement EU Industrial Pollution Control and Control of Major Accident Hazards legislation.

On Fri, Dec 3, 2010 at 4:01 PM, GBFI_DV <GBFI_DV@garda.ie> wrote:
[Dear Sir](#)

[Receipt of your e-mail and attachments is acknowledged.](#)

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

Sent: 03/12/2010 15:49

To: env-chap; GBFI_DV; Liam-Joseph.Cashman@ec.europa.eu; info@ocei.ie

Cc: Martin,David; Brian Cotter; info

Subject: CHAP (2010) 00645 / Garda Bureau of Fraud Investigation (FB.11/242.09) : Internal Review of AIE/2010/015

To: EU CHAP (2010) 00645 / Garda Bureau of Fraud Investigation (FB.11/242.09) / Liam-Joseph Cashman DG Environment, Unit Env. A2 Compliance Promotion, Governance and Legal Issues / Office of the Commissioner of Environmental Information

CC: Covanta Energy, American Chamber of Commerce in Ireland

Date: 3-12-2010

Please note official reply from Department of the Environment over 5 months after the information was requested. My position on this is clear in the attached documentation. Firstly a Foreshore License is an administrative issue, not one of judicial or legislative matters. Secondly the Prevention of Corruption (Amendment Act) 2001 is perfectly clear with regard to "making and an omission in regard to his or her office or position (in relation to a consideration)... shall be guilty of an offence". No attempt was made to address this item in the reply, such that we have now effectively established for the Republic of Ireland, that projects can be delayed indefinitely at the whim of the relevant Minister, even if they are essential to meeting relevant targets set under the Environmental Acquis (Directive 1999/31/EC).

Liam, as I made it very, very clear to you this morning at our meeting in Brussels with DG Environment / DG Energy, companies and individuals involved in industrial development are simply not willing to suffer the vagaries of a regulatory / administrative system, which is clearly operating outside EU and National Legislation. Officials, such as those involved in this documentation, are given 'Carte Blanche' to operate outside the law. Directive 2003/4/EC is simply not functioning as access to information is denied at will, furthermore officials simply do not generate the documentation related to Good Administration, such as processing applications within the terms of 'Public Interest and Appropriate Timeframes', so they don't have to provide access to it on request. This can then be officially recorded, such as by paying €150 to the Commissioner for Environmental Information, as I am doing yet again here, but what then? Unless there is clear evidence that yourselves or the Member State officials responsible for enforcement of the relevant legislation are willing to demonstrate in the short term, that they are prepared to enforce compliance with the legislation on the Statute Books, then the message is very, very clear to all of us involved in the

field of Industrial Development - GO ELSEWHERE.

Pat

----- Forwarded message -----

From: AIE <AIE@environ.ie>

Date: 2010/12/3

Subject: Internal Review of AIE/2010/015

To: Pat Swords <pat.swords.chemeng@gmail.com>

Dear Mr. Swords

Please see attached decision letter and associated documents in relation to the internal review of the decision on your request for information under the Access to Information on the Environment Regulations.

Regards

Matthew McLoughlin

FOI / AIE Unit

Department of Environment, Heritage and Local Government

Is faoi rún agus chun úsáide an té nó an aonán atá luaite leis, a sheoltar an ríomhphost seo agus aon comhad atá nasctha leis. Má bhfuair tú an ríomhphost seo trí earráid, déan teagmháil le bhainisteoir an chórais.

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