To: Broadcasting Authority of Ireland

From: Pat Swords BE CEng FIChemE CEnv MIEMA

Reference: Complaint 316/10

Subject: Reply to RTE's formal reply BAI 2010/1921

CC: EU CHAP (2010) 00645

Date: 10/7/2010

With regard to your letter of the 8th July 2010 I wish to formally state that I am completely unhappy with RTE's reply as it totally fails to address their legal responsibilities as a Public Body and State Broadcaster. As such I am therefore requesting that my complaint be considered by the Authority.

As RTE has failed to address their legal responsibilities, already raised in my complaint, I am taking this opportunity to highlight them once again. Simply put two plus two equals four, that is a fact, not an opinion or a matter for public debate. Similarly EU Environmental Legislation, comprising mainly the 300 or so Directives in the Environmental Sphere, which are commonly known as the Environmental Acquis, is based on:

- A quantified evaluation of the costs, benefits and alternatives and comparison with published criteria at EU and Member State level for acceptance.

This legislation is not based on zero environmental impact. For instance the Integrated Pollution Prevention and Control Directive (Codified version 2008/1/EC) is clear in that its objective is to prevent emissions into air, water or soil wherever this is practicable, taking into account waste management, and, where it is not, to minimise them in order to achieve a high level of protection for the environment as a whole. The European Integrated Pollution Prevention and Control Bureau in Seville (http://eippcb.jrc.es/) publish extensive guidance on the relevant acceptance criteria, as is also completed at the Member State level by the Irish Environmental Protection Agency (http://www.epa.ie/downloads/). In my complaint form I specifically highlighted three aspects, which dominated the relevant broadcast:

The relevant broadcast clearly conveyed that the project should be built off-shore, did not meet current norms and standards for this type of industrial facility and was a threat to the drinking water supplies of the whole area. The legal circumstances are that:

(a) It is illegal to consider an offshore option; indeed the Directors of SEPIL would be liable for a jail sentence if an accident were to occur related to off-shore rather than on-shore production, such as a helicopter transfer.

(b) The project has met and exceeded all relevant norms and standards. This has been confirmed by the independent safety report completed by Advantica. Furthermore in refusing to grant permission for the rerouted 9 km length of pipeline in October 2009, An Bord Pleanala used no technical standard or report to justify this decision, it was based solely on political requirements, see attached details on Appeal to the Commissioner for Environmental Information CEI 10/0002.

(c) *The project has been granted an Integrated Pollution Prevention and Control (IPPC) licence by the EPA. The IPPC Directive is clear in that measures have to be implemented to "achieve a high level of protection of the environment as a whole". This includes the risks of accidents.*

Public participation is a key element of the EU Environmental Acquis, as it is for the Aarhus Convention, which will be highlighted later. If we consider the specific statements in the programme concerned relating to the threat to the drinking water of thousands of people in the Erris area due to the completion of the project, then I must highlight that not only was the project completed in accordance with the public participation requirements of the EU legislation, but the application documents by the developer, the regulator's (inspector's) report and the final permit are all legal documents. Furthermore the public participation included several oral hearings, which are all conducted on a quasi-legal basis. If we consider the EPA inspector's report for the project approval in 2007 (http://www.epa.ie/licences/lic_eDMS/090151b28015004c.pdf) it is abundantly clear that the issue of the threat to the Carrowmore Lake and the drinking water was extensively addressed, as was the concerns and objections raised in the public participation.

Furthermore with regard to the offshore versus on-shore location extensively discussed in the relevant programme, I have already clarified in my complaint and supporting documentation of 7th July that it was simply illegal for the developer to consider an off-shore location. Indeed he would be subject to prosecution and a jail sentence under Irish safety legislation, which was updated in 2005. This aspect of safety was clearly addressed in the approval process for the project. The Environmental Impact Assessment completed in 2003 by the developer being a primary legal document, indeed this is also available on the EPA website as well as other web addresses (http://www.epa.ie/licences/lic_eDMS/090151b28009e93f.pdf see in particular page 30 of 43).

With regard to the safety issues relevant to the Corrib Project, neither EU nor National Legislation is based on zero risk. It is recognised in legislation that an element of 'residual risk' remains even after applying 'all necessary measures' to protect man and the environment. For instance Article 5 of the Directive on Control of Major Accident Hazards involving Dangerous Substances (96/82/EC as amended) clearly states that:

- Member States shall ensure that the operator is obliged to take all necessary measures to prevent major accidents and to limit their consequences for man and the environment.

- Member States shall ensure that the operator is required to prove to the competent authority that he has taken all measures necessary as specified in this Directive.

The EU has issued Guidance on preparing Safety Reports. Safety Reports are required for operators of establishments that fall under the 'top tier' requirements of the Directive on Control of Major Accident Hazards involving Dangerous Substances, which is available from the EU Major Accidents Hazard Bureau. As the EU Guidance on Safety Reports states; "although '**necessary measures**' are taken there will be some element of residual risk. The decision as to whether a residual risk is acceptable depends on national approaches and practices. Nevertheless there are some widely accepted supporting principles for this decision:

- The efficiency and effectiveness of the measures should be proportionate to the risk reduction target (i.e. higher risk require higher risk reduction and, in turn, more stringent measures).

- The current state of technical knowledge should be followed. Validated innovative technology might also be used. Relevant national safety requirements must be respected.

- There should be a clear link between the adopted measures and the accident scenarios for which they are designed.

- Inherent safety should be considered first, when feasible (i.e. hazards should always be removed or reduced at source).

It is also critical to fully understand and differentiate between the two parameters hazard and risk. The Directive on Control of Major Accident Hazards defines them as:

- "Hazard is the intrinsic property of a dangerous substance or physical situation with a potential to create damage".

- "Risk shall mean the likelihood of a specific effect occurring within a specified period or in a specified circumstances".

Risk is therefore a combination of the **likelihood** of occurrence of a defined hazard and the severity of the **consequences** of the occurrence. Hazard is solely an intermediate step in assessing the legislative basis for acceptance based on risk.

The relevant programme discussed in depth in the failure of the project and in particular the pipeline to meet relevant industry norms and standards. The EU has since 1987 adopted some 22 Directives, the basis of the New Approach and Global Approach. New Approach Directives are special in that they do not contain technical detail; they contain broad safety requirements. Manufacturers therefore need to translate these broad 'essential' requirements into technical solutions. Manufacturers usually complete this by using specially developed European engineering standards. The Pressure Equipment Directive (97/23/EC) is an example of the New Approach. The Global Approach to conformity assessment allows the use of the CE mark as an indication that the products comply with the essential requirements of applicable directives and that the products have been subject to a conformity assessment procedure provided for in the directives. The Corrib pipeline process is fully compliant with this process, such details were made public and are readily available (http://www.corribgaspipeline.com/uploads/file/Oral%20Hearing%202009/09_COR%2025%201MDR0470_Pipeline%20Integrity_%20J_Purvis%20FINAL.pdf). As has already been highlighted in my documentation of the 7th July, An Bord Pleanala refused to accept the technical compliance of the project, the grounds of which are subject to a separate appeal to the Commissioner for Environmental Information CEI/10/0002. Note: There are over thirty infringements cases being processed by the EU Commission against the Irish State for failure to comply with the Environmental Acquis, many of these relate to the actions of An Bord Pleanala.

The issue of the complaint is that yet again on the State Broadcaster totally untrue and false accusations relating to the project have been broadcasted. Not only has

there been a failure to broadcast the proper legal facts of the matter, but the introduction to the IPPC Directive is clear in that:

- Participation, including participation by associations, organisations and groups, in particular non-governmental organisations promoting environmental protection, should accordingly be fostered, including by promoting environmental education of the public.

Shell to Sea and their associated groups, which have been consistently engaged in anti-democratic and violent behaviour, are certainly not engaged in promoting environmental protection. Furthermore why were they given free rein on the programme to make false and abusive statements, which went uncorrected, thereby clearly leaving the public poorly educated as to the environmental issues at hand. It is simply not adequate as RTE concluded in their letter of 7 July (ref: BAI 2010/1921) that "RTE expressed no views on the outcome on the process".

One of the most significant elements 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, which are often known as the three pillars of the Aarhus Convention. 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.

Ireland has failed to ratify the Aarhus Convention, the only one of the 27 Member States to fail thus, and one of the very few in Europe [(1)]. Ireland can't ratify the convention as it doesn't provide proper Access to Justice. In fact of the three 'pillars' of Aarhus, only one is properly implemented according to EU law, which is Directive 2003/4/EC on Access to Information on the Environment. There are two components to this Directive, (a) information on the environment must be provided by public bodies on request and (b) there has to be active and systematic dissemination of environmental information by public bodies. This Directive is enacted under Irish Law by S.I. No. 133 of 2007. Article 7 (1) is clear in that:

- Member States shall take the necessary measures to ensure that public authorities organise the environmental information which is relevant to their functions and which is held by or for them, with a view to its active and systematic dissemination to the pubic.

RTE is clearly a public authority for the purposes of this Directive, as has been confirmed by the appeal to the Commissioner for Environmental Information CEI/09/0015, despite RTE's claims that it was exempt due to its journalistic functions. Furthermore RTE is overwhelming the main source of information on the environment for the Irish Public. The purpose of my Access to Information on the Environment request to RTE on 26th October was to establish the benchmarks that RTE uses for reporting of 'news' connected to the Environmental Acquis and industrial development, the qualifications of RTE staff involved in researching and reporting on environmental matters, and the policy of RTE with regard to its obligations under Aarhus legislation for dissemination of environmental information.

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1 Only Ireland, Switzerland and Iceland have failed to ratify the Convention in Western Europe. Even Kazakhstan ratified it in 2001.

It is not true that as RTE claimed in their letter of the 7th July (BAI 2010/1921) that "*the Information Commission having examined the request and RTE's response found that RTE had acted correctly and dismissed the appeal"*. The Commissioner's powers relate only to the first part of Directive 2003/4/EC, which is access to information on request. Of equal if not more importance is the second part on dissemination of environmental information. However, the Commissioner has no authority in this area but made it very clear in that:

- "*The Aarhus Convention: an Implementation Guide*" [ECE/CEP/72] says that if the public authority does not hold the information requested, it is under no obligation to secure it. It goes on to suggest that failure to possess environmental information relevant to a public authority's responsibilities might be a violation of Article 5, paragraph 1(a) of the Convention which relates to the requirement that public authorities collect, possess and disseminate environmental information.

As regards to the first part of my request:

- The criteria RTÉ uses with regard to assessment of environment impact, environmental pollution, acceptable risk, unacceptable risk, unacceptable hazard;

This is a critically important question. When is a claim of environmental or safety impact just (a) malicious rumours / hear say or (b) when is it a genuine fact? This goes back to the first section of this letter in that environmental compliance is not a matter of public opinion or debate but established within a legislative framework, which is based on quantified assessment. Controversy sells; broadcasting the facts in order to defuse the controversy does not. Section 39 (1) b of the Broadcasting Act of 2009 is explicitly clear:

- "That the broadcast treatment of current affairs, including matters which are either of public controversy or the subject of current public debate, is fair to all interests concerned and that the broadcast matter is presented in an objective and impartial manner".

In the relevant programme concerned, the Shell to Sea group were given free reign to make false statements relating to the project. Neither was any attempt made to clarify by RTE the correct environmental information on the three main issues, which was clearly available to them from other Public Bodies to disseminate, as has been already highlighted above. This clearly was a broadcast of rumour and hear say. If we consider RTE's own Programme Standards and Guidelines 2008, is very clear in its section on Objectivity and Accuracy:

- "Accuracy in the facts RTE present is important to maintain this function. Sources must be checked and rechecked. It is not sufficient that information seems to be true or that a source appears to be convincing. Corroborative confirmation should be a priority before broadcasting any news. Rumours or speculation must not be broadcast as facts…. The requirement to be accurate spreads beyond the inputs of RTE reporters, presenters, etc. RTE is also obliged to ensure as far as possible that contributors to programming are accurate in their assertion of facts. Presenters in live programmes need to be constantly alert for comments by contributors which may be inaccurate. Presenters may need to challenge statements of fact if they doubt the veracity of what is said".

It is abundantly clear that this did not occur in the relevant programme, particularly with regard to **as far as possible ensuring that the contributor was accurate in his assertion of facts**. Despite the Corrib controversy running for nearly a decade, RTE clearly does not understand the legislative basis or its role in that legislative basis. The appeal to the Commissioner for Environmental Information clearly showed that RTE has no established criteria for deciding what is (a) rumour / hear say or (b) actual environmental impact, which is outside the legislative basis. While questions 2 and 3 of my request were refused as they did not meet the strict criteria of environmental information, the preliminary decision by the Senior Investigator Elizabeth Dolan, clearly showed the dismal extent of qualifications of its staff, e.g. RTÉ confirmed that specific training on environmental maters has not been provided in-house to its staff. Finally with regard to question 4 on the Aarhus Convention and RTE's role in dissemination of environmental information, the organisation clearly had made no attempt to comply with it and its Group Secretary clearly stated that it was exempt due to its journalistic functions.

With regard to Section 39 (1) (d) of the Broadcasting Act 2009, this states that:

- "Every broadcaster shall ensure that… anything which may reasonably be regarded as causing harm or offence, or as being likely to promote, or incite to, crime or as tending to undermine the authority of the State, is not broadcasted".

To put it mildly all of us who have worked on legally compliant projects, such as Corrib, are sick and tired of the constant "Trials by Media in the Court of Public Opinion", such as this programme, in which the facts and legislative basis are simply ignored in favour of 'cheap' news. Let me repeat it again, the three points above which formed the basis of the programme were false and had no basis in law. Furthermore companies are no longer investing in Ireland, as StatoilHydro 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".*

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".*

As I stated in my documentation of 7th July; "the developer's role is to ensure compliance with the relevant legislation not conduct a PR campaign to inform the Irish Public on the regulatory process. That is clearly the function of public bodies under Directive 2003/4/EC (S.I. No. 133 of 2007) and in undermining the regulatory

process by broadcasting rumour and conjecture as fact, holding public opinion poles on whether the project should be built offshore rather than on-shore, RTE has clearly failed in their legal responsibilities and is culpable in causing extensive delays and additional costs to this project".

Massive job losses are now occurring in engineering design, management and construction related to industrial development projects which have relocated to other jurisdictions. Harm has been done. Crime has also been incited, one of the main leaders of the Shell to Sea Group, Maura Harrington, is now in jail for the fifth time. As was pointed out in my documentation of the 7th July:

- On 12th March 2009 Judge Mary Devins sentenced Maura Harrington to jail for 28 days for the assault on a Garda, which she described as a "despicable show of utter contempt". In sentencing her, Judge Devins said she was less inclined to believe in her passion for her cause having "witnessed the enjoyment she seems to get in being in the public limelight". She also sentenced her for being in contempt of Court.

These people, as was the case in the relevant programme that was the subject of the complaint, have been given practically unlimited access by RTE, in which no attempt has been made to establish the factual basis of their claims before broadcasting their cause. The comment above related to the 'limelight' is relevant because this is what the media has provided them with.

Furthermore the authority of the state has been compromised as this broadcasting, plus the conduct of opinion poles on how the project should be implemented, has clearly undermined the authority of the regulatory agencies involved in the project approval. Certainly if anybody without a knowledge of the regulatory issues listened to the programme, which is the subject of the complaint, they would certainly be left concerned that all was not well and there were major threats to safety and drink water supplies due to failures of the regulatory process, all of which in fact are no more in reality than rumour and hear say.

PS: As I stated in my complaint form I out of the country a lot, indeed only working one day in Ireland over the recent four weeks (I'm not joking about the harm this behaviour has done to us who work in industrial development). It was therefore lucky that I was in Dublin for the 10th July and was able to pick up the mail and reply within the statutory 14 day period. Can you please use the supplied e-mail address as well as the postal address for future correspondence on this matter?