



EUROPEAN COMMISSION

LEGAL SERVICE

Brussels, 20 July 2011
Ares(2011) 792673 PJO/lde

Ms Aphrodite Smagadi
Secretary to the Aarhus Convention
Compliance Committee
Environment Division
Bureau 332
Palais des Nations
CH-1211 Geneva 10
Switzerland

Re: Communication to the Aarhus Convention Compliance Committee concerning the renewable energy programme in Ireland (ACCC/C/2010/54); next steps

Dear Ms Smagadi,

At the beginning of this month, Mr Swords' response to the questions posed by the Compliance Committee was posted on its website. This document runs to no less than 188 pages and is accompanied by 17 annexes.

More importantly, while it purports merely to contain answers to the questions posed by the Committee to Mr Swords and to the Commission, in reality his response ranges well beyond that. In particular, he has sought to widen the scope of his Communication very considerably.

The Communication concerns the Union's responsibility for alleged infringements by Ireland of the Aarhus Convention in relation to Ireland's policy regarding renewable energy and specifically wind energy. In contrast, his response of June 2011 covers matters such as Ireland's climate change legislation, its waste policy, access to justice and many other issues not raised in the Communication. Indeed, in some passages of his response such as paragraphs 1.1 and 3.3 he appears to request the Committee to examine Ireland's entire environmental policy (including acts which he has not even mentioned) and the Union's involvement in it. He even seeks to impute to Ireland and the Union acts of private parties such as a letter written by an academic to the Irish Times (paragraph 4.3.2).

The Compliance Committee is a non-confrontational and non-judicial body, and accordingly its procedures are flexible. Nevertheless, common sense suggests that, if its work is to be meaningful, the issues to be determined must be clearly circumscribed. That is why point 20(b) of Decision I/7 states that the Committee should reject a Communication *in limine* if it is found to be manifestly unreasonable. In the Commission's submission, the same must logically apply to subsequent documents lodged by the Communicant.

Commission européenne, B-1049 Bruxelles / Europese Commissie, B-1049 Brussel - Belgium. Telephone: (32-2) 299 11 11.
Office: BERL 1/241. Telephone: direct line (32-2) 296.63.39. Fax: (32-2) 295.24.86.

E-mail: peter.oliver@ec.europa.eu

Quite apart from that, the Union's rights of defence are at stake. It is quite impossible for any party to defend itself against such rambling, all-embracing and amorphous grievances as those in the response. In other words, following this response the Union is currently not in a position to participate meaningfully in these proceedings or assist the Compliance Committee.

The Commission would suggest that Mr Swords' new document – in reality a new set of submissions – renders the entire Communication manifestly unreasonable. We would therefore urge the Committee to reconsider its provisional finding that the Communication is admissible.

Should the Committee not be minded to follow that approach, then at the very least the Commission would respectfully request that the Committee determine forthwith the precise scope of the present proceedings and find Mr Swords' response to be inadmissible to the extent that it goes beyond the scope of the Communication.

If the Committee decides to follow the second alternative, then as the Commission has already indicated in the final paragraph of its submissions, it would welcome the opportunity to comment in writing on those parts of Mr Swords' document which are admissible.

Unless those steps are taken, the Commission would respectfully suggest that the case cannot usefully proceed.

We have been unofficially informed that, before Mr Swords' Communication was received, the Committee had planned to call the Communicant and the Commission to a meeting in September. In view of the considerations set out above, we would respectfully suggest that that would be premature. While the Commission firmly believes that the Compliance Committee should conclude its investigations with all due expedience, Mr Swords cannot expect the Committee to reach a speedy conclusion in these circumstances which are of his own making.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'P. Oliver', with a stylized flourish at the end.

Peter Oliver Katarzyna Herrmann
Agents for the Commission

cc: Mr Brakeland, Ms Long, Ms Wiedner, Mr Nagy, Mr Trych (Commission DG ENV)
Mr Howes, Ms Eginard (Commission DG ENER)