

To: Ms Alina Novikova, Associate Environmental Affairs Officer – Aarhus Convention Secretariat / Ms Fiona Marshall, Environmental Affairs Officer, UNECE

From: Pat Swords BE CEng FICHEM CEnv MIEMA

Re: Letter with regard to details received on Access to Information on the Environment Request 8th Jan 2012

Date: 10th January 2012

Attachments: (1) Letter of the 19th April 2011 of Irish Administration to EU Commission in relation to NREAP and SEA. (2) Irish Administration Internal Note on Communication ACCC/C/2010/54

Dear Ms Novikova / Ms Marshall

As regards the progress of the Communication, I am conscious about bringing in fresh information. However, an Access to Information on the Environment Request, which I submitted on the 15th October 2011, was just recently answered and provided documentation, which is very relevant to this Communication and the responsibilities of the EU in relation to the Convention.

Essentially, I have been stating all along, that no Strategic Environmental Assessment has ever been completed of the Irish Renewable Energy Programme, indeed no environmental assessment at all. This is despite the fact that Article 3 (2) (a) of Directive on Strategic Environmental Assessment 2001/42/EC, requires that such a detailed assessment and public participation to be completed for programmes, which lead to future development consent of wind farms and similar energy infrastructure. What came to light in the file I just recently received was that on the 10th February 2010, the Department of Communications, Energy and Natural Resources sent an e-mail to the EU Commission querying as to whether there was an obligation to do a Strategic Environmental Assessment with regard to the National Renewable Energy Action Plan (NREAP), as this had not been mentioned or discussed at any of the meetings. See attachment (1). This may have been prompted by my appeal CEI/09/0016 in relation to the complete absence of such documentation, which was on-going at that time.

It was not until the 7th July 2010 that a formal clarification was sent jointly by the Unit Heads of DG Energy and DG Environment and reached the Department of Communications, Energy and Natural Resources (via the Department of the Environment) clarifying that a Strategic Environmental Assessment on the NREAP was not necessarily obliged at this stage of the process. Their position being that if a Member State has decided not to include in its NREAP specific mandatory measures to comply with, then a Strategic Environmental Assessment was not required at this stage.

To me this is a complete contradiction as Article 4 of the Renewable Energy Directive 2009/28/EC is very clear:

- "The National Renewable Energy Action Plans shall set out Member States' national targets for the share of energy from renewable sources".

While Article 3 of the Directive is entitled:

- "Mandatory national overall targets and measures for the use of energy from renewable sources".

Furthermore, if those targets were not to be adequately met, then the Commission's position was to refer back those plans with a recommendation. To me this is

important; it clearly demonstrates that the Commission was both informed and clearly complicit in the decision not to complete any environmental assessment for this programme of enormous scale, in relation not only to Ireland but also to all the other Member States.

In addition, while the outcome of this Access to Information on the Environment Request contains extensive references, both between Irish Officials and their EU counterparts, to 'Consultations' with the public, nowhere is there mention of 'Public Participation in Decision-Making'. Please also note the wording in Section 5.4 (c) of the EU's template for the NREAP, which refers to 'public consultation'. This is a constant source of frustration in that policies, programmes and projects can be legitimised by completing a public consultation in which there is never any reference to how the Submissions were evaluated or even considered in the final decision which emerges. This is in complete variance to the Aarhus Convention itself, which at no stage mentions 'Consultations', but requires specifically 'Public Participation in Decision-Making', in particular as to how in the decision due account is taken of the outcome of the public participation¹.

Clearly at no stage was it either the EU Commission's intent or the Irish Administration's intent, to assess the environmental aspects of this renewable energy programme, inform the public, provide them with adequate time to prepare and participate effectively in the decision-making and take due account of the outcome of the public participation. It is also clear from the both attachments, that not only has a Strategic Environmental Assessment, or any environmental assessment ever been completed for the programme as a whole, but that there is no intent to do so going forward, even though both parties are fully aware of this Communication.

In relation to the situation in Ireland, further details from this same Access to Information Request in relation to a current waste policy consultation confirm that the official Guidelines for Public Sector Consultations 'Reaching Out'² states:

- “Both public bodies and participants in consultations should always distinguish between the evaluation and analysis of a given consultation process on the one hand, and the processes by which substantive decisions will be taken on the other”.

As the answer to the Request in relation to records connected to “taking account of the outcome of the public participation” in the current National Waste Policy public consultation process stated:

- “As this time, no such records exist. When such records are generated, it may be the case that they are considered to be non-releasable on grounds such as the need to protect Cabinet confidentiality and the wider policy making deliberative process”.

In summary, this is how consultations, such as for the NREAP are carried out, for which no record is available on how due account of the public consultation was considered in the development of the plan. Clearly the decision is taken at Cabinet level, and as cabinet confidentiality applies, one has under Irish law to wait thirty years to access the record of how the public consultation was considered, if at all.

¹ In particular as further defined in Page 109 of the “Aarhus Convention: An Implementation Guide”: <http://www.unece.org/fileadmin/DAM/env/pp/acig.pdf>

² http://www.betterregulation.ie/eng/Publications/Consultation_Guidelines.doc#Section3

If I can be of further assistance to yourself on the above issues, please do not hesitate to contact me.

Regards

Pat Swords