



Communication ACCC/C/2010/54: Response of EU Commission to Request under Regulation 1367/2000 in relation to REFIT II

Pat Swords

to:

public.participation, Aphrodite Smagadi, fiona.marshall

13/03/2012 22:42

Hide Details

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

To: "public.participation" <public.participation@unece.org>, Aphrodite Smagadi <Aphrodite.Smagadi@unece.org>, "fiona.marshall" <fiona.marshall@unece.org>

### 3 Attachments



315530-Swords Methodology calculation of emissions.pdf Environmental info annex (2).pdf EAG 2008 EN (2).pdf

**To:** Ms Aphrodite Smagadi, Legal Officer – UNECE Aarhus Convention Secretariat / Ms Fiona Marshall, Environmental Affairs Officer, UNECE

**From:** Pat Swords BE CEng FIChemE CEnv MIEMA

**Subject:** ACCC/C/2010/54 - REFIT II and the position of the EU Commission with respect to compliance with the Aarhus Convention and transparency of environmental information

**Date:** 13<sup>th</sup> March 2012

Dear Ms Smagadi / Ms Marshall

Further to my letter to yourselves of the 29<sup>th</sup> January 2012 in relation to the EU approval of REFIT II, the State Aid funding for an additional 4,000 MW of renewable energy in Ireland, representing more than two thousand wind turbines, the below and the attached documentation relate to the position of the EU Commission, obtained just recently under Regulation 1367/2006. Firstly, the EU Commission are fully aware for some considerable time of the failures with regard to compliance with the Convention in Ireland in relation to the renewable energy programme. As can be seen from the attached their position is now clear – State Aid approval does not require compliance with the Aarhus Convention, i.e. the State Aid assessment was limited to ensuring that the objectives of Directive 2009/28/EC were met. However, I would like if possible in this regard to point out recital (90) of the same Directive, which states:

- “The implementation of this Directive should reflect, where relevant, the provisions of the Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters”.

I am sure you will find some sympathy with my position, in that given this REFIT II programme will literally change the landscape of Ireland, once considered a unique natural heritage, not to mention transfer over €8 billion of capital costs onto the Irish electricity consumer, that the Convention is highly relevant to the State Aid funding arrangements for the implementation of this Directive. I would be therefore grateful if it is possible at this late stage to bring this matter to the attention of the Compliance Committee.

The second part of my Access to Information on the Environment request related to the transparency of environmental information. As you know from my position at the September 2011 meeting, the evidence shows that if any further wind turbines are added to the Irish grid there will be no further emission and fuel savings. The EU are consistently stating, not only in Recital (1) of the 2009/28/EC Directive, but in other important environmental documentation, such as in reports prepared for the UN<sup>[1]</sup>, that this Directive is going to lead to large savings in greenhouse gas emissions and fossil fuels. This is not happening. In addition the documentation prepared for this State Aid funding, see attached provided by the EU<sup>[2]</sup>, does not provide any quantification of greenhouse gas savings.

However, the extent of failure with regard to transparency goes further. As part of the progress reports related to the National Renewable Energy Plans (NREAPs) submitted to the Commission in January 2012, it is clearly obvious that false claims are being made in Section 10 in relation to emission savings from intermittent renewable sources, such as wind energy, as the resulting very significant inefficiencies induced on the grid are completely ignored. Indeed the Irish progress report even admits that the information is not accurate<sup>[3]</sup>.

Sadly the EU Commission's reply demonstrates that they have no means of ensuring the transparency of this information (no relevant calculation method) and it is essentially up to us the public to judge the transparency of the information on the public platform, rather than them in relation to their obligations under the Convention.

While this may seem somewhat neglectful of their obligations, I would also point out that the EU Ombudsman did not in his Decision on Case 2587/JF/2009<sup>[4]</sup> consider he was in any way obliged to deal with the lack of transparency in relation to the statements of the EU Commissioner for Climate Action on the Irish State Broadcaster, even though it was brought to his attention. Neither have the EU Commission contacted me with regard to taking any action since the Decision of the EU Ombudsman in September 2011.

I trust this clarifies matters and look forward to the outcome of the pending Compliance Committee meeting.

Regards

Pat

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<sup>[1]</sup> See for example Section 3.2 COM (2011) 624 : [http://ec.europa.eu/clima/policies/g-gas/docs/com\\_2011\\_624\\_en.pdf](http://ec.europa.eu/clima/policies/g-gas/docs/com_2011_624_en.pdf)

<sup>[2]</sup> See also answer to question 3 on REFIT II: [http://www.unece.org/fileadmin/DAM/env/pp/compliance/C2010-54/Correspondence%20with%20communicant/frCommC54Annex\\_Reply\\_from\\_DCENR\\_5Sept2011.pdf](http://www.unece.org/fileadmin/DAM/env/pp/compliance/C2010-54/Correspondence%20with%20communicant/frCommC54Annex_Reply_from_DCENR_5Sept2011.pdf)

<sup>[3]</sup> See page 24 of Irish NREAP Progress Report: <http://www.dcenr.gov.ie/NR/rdonlyres/B611ADDD-6937-4340-BCD6-7C85EAE10E8F/0/IrelandfirstreportonNREAPJan2012.pdf>

<sup>[4]</sup> See point 14 of Decision of the Ombudsman: [http://www.unece.org/fileadmin/DAM/env/pp/compliance/C2010-54/Correspondence%20with%20communicant/frCommC54\\_Letter\\_of\\_Ombudsman\\_27Sept2011.pdf](http://www.unece.org/fileadmin/DAM/env/pp/compliance/C2010-54/Correspondence%20with%20communicant/frCommC54_Letter_of_Ombudsman_27Sept2011.pdf) and Section 11.2 of the Response of the Communicant: <http://www.unece.org/fileadmin/DAM/env/pp/compliance/C2010-54/Correspondence%20with%20communicant/Response%2021.06.11/frCommun21.06.11.pdf>

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

From: <[Hans.Van-Steen@ec.europa.eu](mailto:Hans.Van-Steen@ec.europa.eu)>

Date: Mon, Mar 12, 2012 at 4:51 PM

Subject: RE: Demande d'accès aux documents : GESTDEM/2012/500 - délai 20/02/2012 - FW: Request for Access

to Information on the Environment under Regulation 1367/2006: Approval of REFIT II and transparency of emissions data in NREAP Progress Reports

To: [pat.swords.chemeng@gmail.com](mailto:pat.swords.chemeng@gmail.com)

Cc: [ENER-ACCES-DOCUMENTS@ec.europa.eu](mailto:ENER-ACCES-DOCUMENTS@ec.europa.eu)

Dear Mr Swords,

Please find attached our reply to your e-mail dated 29 January 2012.

Yours faithfully,

Hans van Steen

**Hans van Steen**  
**Head of Unit**  
**Renewables and CCS policy - ENER/C1**  
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**From:** Pat Swords [\[mailto:pat.swords.chemeng@gmail.com\]](mailto:pat.swords.chemeng@gmail.com)

**Sent:** Sunday, January 29, 2012 9:43 PM

**To:** ENER ACCES DOCUMENTS

**Subject:** Request for Access to Information on the Environment under Regulation 1367/2006: Approval of REFIT II and transparency of emissions data in NREAP Progress Reports

To: DG Energy - Access to Documentation

From: Pat Swords BE CEng FIChemE CEnv MIEMA 10 Hillcourt Rd, Glenageary, Co. Dublin

Subject: Request for Access to Information on the Environment in relation to Regulation 1367/2006: Documentation in Relation to Approval of REFIT II and transparency of emissions data in the progress reports on the National Renewable Energy Action Plans

As the Commission is aware it is the subject of a Communication ACCC/C/2010/54 at the UNECE Aarhus Convention Compliance Committee in relation to the renewable energy programme in Ireland. As the Compliance Committee pointed out in their letter of the 13<sup>th</sup> October 2011<sup>[1]</sup>, on approval of the Convention, the EU declared that it would be responsible “for the performance of those obligations resulting from the Convention which are covered by Community law in force”. They therefore concluded the letter with:

- “Could you please explain why the Commission says that it is not responsible for the actions of the Member State in this case?”

On February 12<sup>th</sup> the EU Commission approved the REFIT II tariffs in Ireland[2], which is an extension of the State Aid under REFIT I (State Aid N571/2006). In answering questions in the Oireachtas (parliament) on the 29<sup>th</sup> November 2011[3], the Minister for Communications, Energy and Natural Resources made it clear:

- “REFIT 2, the next phase of the renewable energy feed-in-tariff, REFIT, scheme, is designed to support up to 4,000 MW of onshore wind, landfill gas and hydro technologies”.
- “I have not had any contact with the Commissioner for state aids but I can tell the Deputy that I have raised it directly with Commissioner Oettinger, the energy Commissioner. I expected that we would have it by now. The Deputy asked me in his question to specify the reasons for the delay and to be honest with him. I do not know the reason it is taking so long. **I am advised we have complied with everything that has been requested from us**”.

In addition it is clearly stated in on the EU website that REFIT II, like REFIT I, is for the objective of environmental protection.

My first request under Regulation 1367/2006 therefore relates to the approval process for REFIT II by the EU Commission. In particular all environmental information in relation to how the environmental protection objectives were assessed and quantified and secondly how compliance with the requirements of Aarhus Convention was determined to be in order.

One of the key aspects of Communication ACCC/C/2010/54 is in relation to environmental information associated with the performance of wind farms. This was clearly articulated to the Compliance Committee in the opening slides of the presentation prepared by the Communicant for the meeting in Geneva on the 21<sup>st</sup> September 2011[4]. In contrast the EU Commission were adamant in their opening statement to the Committee that the only information the Irish public were entitled to was in relation to what might be a threat to the environment[5].

It is now clear from DG Energy’s renewable energy ‘Transparency Platform’[6], that progress reports on the National Renewable Energy Action Plans are being received from the Member States, which have been completed to a template specified by the EU Commission. In particular Section 10 of the template, which requires an estimation of the net greenhouse gas emission savings due to the use of energy from renewable sources (*Article 22 (1) k of Directive 2009/28/EC*)).

The Aarhus Convention is clear in Article 5 that each Party shall ensure:

- “Public authorities possess and update environmental information which is relevant to their functions”.
  
- “Each Party shall ensure that, within the framework of national legislation, the way in which public authorities make environmental information available to the public is transparent and that environmental information is effectively accessible”.

These provisions are then incorporated in Directive 2003/4/EC with regard to the Member States and Regulation 1367/2006 with regard to the institutions of the EU. Unfortunately Communication ACCC/C/2010/54 clearly demonstrated that in the case of Ireland, which was certainly typical of other Member States, that there was a complete utter failure to assess properly and verify the emission and fuel savings, which were occurring with regard to intermittent sources of renewable energy, such as from wind energy and solar energy. It is also sadly clear from the latest information on DG Energy ‘Transparency Platform’, that this is still the case.

In this regard I am highlighting once again the obligations of institutions of the EU, such as the Commission, under Regulation 1367/2006:

- Article 4 (1): “Community institutions and bodies shall organise the environmental information which is relevant to their functions and which is held by them, with a view to its active and systematic dissemination to the public, in particular by means of computer telecommunication and/or electronic technology in accordance with Articles 11(1) and (2), and 12 of Regulation (EC) No 1049/2001”.
  
- Article 8 (1): “Community institutions and bodies shall, insofar as is within their power, ensure that any information that is compiled by them, or on their behalf, is up-to-date, accurate and comparable”.
  
- Article 8 (2): “Community institutions and bodies shall, upon request, inform the applicant of the place where information on the measurement procedures, including methods of analysis, sampling and pre-treatment of samples, used in compiling the information can be found, if it is available. Alternatively, they may refer them to the standardised procedure that was used”.

My second request under Regulation 1367/2006 relates obviously to the major concerns that I

and other have in relation to the transparency of environmental information, related to the emission and fuel savings, attributed to sources of intermittent renewable energy, in particular wind energy and solar energy. I am therefore requesting all environmental information in relation to the transparency of such information contained on the renewable energy 'Transparency Platform'.

Finally this is not only a matter in relation to the Aarhus Convention. The Lisbon Treaty is clear in that in preparing its policy on the environment, the Union shall take account of:

- Available scientific and technical data;
- Environmental conditions in the various regions of the Union;
- The potential benefits and costs of action or lack of action;
- The economic and social development of the Union as a whole and the balanced development of its regions.

In addition the Lisbon Treaty requires that the institutions shall maintain an open, transparent and regular dialogue with representative associations and civil society. None of the above is being adhered to in relation to the renewable energy policy of the Union.

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[1] [http://www.unece.org/fileadmin/DAM/env/pp/compliance/C2010-54/Correspondence%20with%20Party%20concerned/topartiesC54EU\\_afterDiscussion.pdf](http://www.unece.org/fileadmin/DAM/env/pp/compliance/C2010-54/Correspondence%20with%20Party%20concerned/topartiesC54EU_afterDiscussion.pdf)

[2] [http://ec.europa.eu/competition/elojade/isef/case\\_details.cfm?proc\\_code=3\\_SA\\_31236](http://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=3_SA_31236)

[3] <http://debates.oireachtas.ie/dail/2011/11/29/00006.asp>

[4] [http://www.unece.org/fileadmin/DAM/env/pp/compliance/C2010-54/Correspondence%20with%20communicant/frCommC54\\_ppt\\_CC\\_meeting\\_21Sept11.ppt](http://www.unece.org/fileadmin/DAM/env/pp/compliance/C2010-54/Correspondence%20with%20communicant/frCommC54_ppt_CC_meeting_21Sept11.ppt)

[5] [http://www.unece.org/fileadmin/DAM/env/pp/compliance/C2010-54/Correspondence%](http://www.unece.org/fileadmin/DAM/env/pp/compliance/C2010-54/Correspondence%20with%20Party%20concerned/topartiesC54EU_afterDiscussion.pdf)

[20with%20Party%20concerned/EUC54\\_Opening\\_statement\\_CC34.doc](#)

[6]

[http://ec.europa.eu/energy/renewables/transparency\\_platform/template\\_progress\\_report\\_en.htm](http://ec.europa.eu/energy/renewables/transparency_platform/template_progress_report_en.htm)