APPLICATION

lodged on behalf of the applicant

Name of Applicant: **European Platform Against Windfarms**
EPAW

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Defendant:

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Method of service:

The Applicant hereby declares pursuant to Article 44(2) of the Rules of Procedure that it chooses as a method of service acceptance by email to the following **single email address**:
drkiss@emla.hu

General Court of the European Union
Rue du Fort Niedergrünewald
Luxembourg
L-2925

The Honorable Court,

EPAW – European Platform Against Windfarms (hereafter: Applicant or EPAW)

- according to **Article 263** of the Treaty on the Functioning of the European Union (hereafter: TFEU)

- pursuant to Article 12 of the **Regulation (EC) No. 1367/2006** of the European Parliament and of the Council of 6 September 2006 on the application of the provisions of the Aarhus Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters to Community institutions and bodies (hereafter: Aarhus Regulation)

- in conformity with **Commission Decision of 13 December 2007** laying down detailed rules for the application of Regulation (EC) No 1367/2006 of the European Parliament and of the Council on the Aarhus Convention as regards requests for the internal review of administrative acts (2008/50/EC) (hereafter: Aarhus Regulation Implementing Decision)

- according to the **Rules of Procedure of the General Court** (1-7-2011)

hereby submits the following

APPLICATION FOR ANNULLMENT

against the European Commission (hereafter: Defendant or Commission) as follows.

I. Type of Action

1. The Applicant requests pursuant to Article 264 TFEU the Honorable General Court to declare the following concerned acts null and void:

2. Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions **"Renewable Energy: a major player in the European energy market"** COM(2012)271

3. Answer of the European Commission to the Request for Internal Review of EPAW **No. AG/ss ener.c.l(2012)1664829** by way of DG Energy dated 21 January 2013

4. In the Applicant's understanding, the aforementioned Commission Communication and the response of the Commission are unlawful by infringing the Aarhus Convention as approved by the 2005/370/EC: Council Decision of 17 February 2005 on the conclusion, on behalf of the European Community, of the Convention on access to information, public participation in decision-making and access to justice in environmental matters.

II. Statement of Facts

1. The Defendant has published in on 6th June 2012 the aforementioned Commission Communication. The contested Communication defines the renewable energy policy of the EU after 2020.

2. The Applicant, conforming to the requirements of the Aarhus Regulation as well as the Aarhus Regulation Implementing Decision, has submitted a **Request for Internal Review** pursuant to Article 10 of the Aarhus Regulation dated 18 July 2012 within the statutory deadline of six weeks.

3. The Defendant has considered the Request for Internal Review of the Applicant procedurally inadmissible and has never examined the Request for Internal Review in its merits. The Defendant argued that the contested Commission Communication is neither an act of individual scope nor an act having a legally binding effect.

III. Legal Background

1. Eligibility of the Applicant to submit a Request for Internal Review

1.1. The **European Platform Against Windfarms (EPAW)** was founded in Paris on October 4th 2008 by a small number of federations, associations and other groups from four EU countries. It now has 584 member-organisations, from 24 countries (individuals cannot become members). The aim of EPAW is to defend the interests of its members which are either:

- opposing one or more wind farm proposals;
- or questioning the effectiveness of wind farms as a tool for solving the problems of man and the planet;
- or defending the flora, fauna and landscapes from damage caused by wind farms, directly or through environmental degradation such as erosion, water contamination and bush fires;
- or generally fighting against the damaging effects of wind farms on tourism, the economy, people's quality of life, the value of their properties and, increasingly often, their health;
- or a combination of the above.

1.2. As such, EPAW undoubtedly meets the requirements of the Aarhus Regulation (Art. 11) such as it is

- it is an independent non-profit-making legal person in accordance with a Member State's national law or practice;
- it has the primary stated objective of promoting environmental protection in the context of environmental law;

- it has existed for more than two years and is actively pursuing the objective of promoting environmental protection in the context of environmental law;
- the subject matter in respect of which the request for internal review is made is covered by its objective and activities.

1.3. Eligibility of EPAW to submit the original Request for Internal Review as well as the present Application was never contested by the European Commission, and as such, the answer of the European Commission to the Request for Internal Review of EPAW **No. AG/ss ener.c.l(2012)1664829** by way of DG Energy dated 21 January 2013 contains the following sentence:

"*Therefore, the Commission's services consider that EPAW complies with the criteria set in Article 11 of the Regulation and is therefore entitled to make a request for internal review.*"

1.4. It has a particular significance in the context of the previous correspondence between the Applicant and the Defendant because in its first letter of the Defendant sent to the Applicant dated 5 October 2012 numbered **ENER/C1/AG/lb D(2012)1342335**, DG Energy had questioned the eligibility of the Applicant to submit a Request for Internal Review. The matter of clarification between the parties was whether EPAW has been active for the requested 2 years before lodging a request.

1.5. This was successfully demonstrated by the Applicant and thus the Defendant has responded to the Request for Internal Review in January 2013, acknowledging the eligibility of EPAW.

1.6. Once regarded by the Commission as eligible, EPAW can enjoy the rights that are included in Art. 12 of the Aarhus Regulation, i.e.

"*may institute proceedings before the Court of Justice in accordance with the relevant provisions of the Treaty.*"

2. Admissibility of the Request for Internal Review submitted in the case

2.1. The Applicant strongly contests the validity of reasoning applied by the Defendant in its response to the original Request for Internal Review. The Defendant applies two parallel reasoning to refuse the examination in merit of the Request for Internal Review. These two reasons are:

- the contested act (the Communication) "is not an act of individual scope within the meaning of Article 10 of the" Aarhus Regulation
- the contested act (the Communication) "is not an act adopted by an EU institution having legally binding effects"

2.2. The Applicant will examine these reasons in detail below.

2.3. As a general rule, the Applicant opines that in order to be eligible for being reviewed, an administrative act of an EU institution has to meet the requirements of the Aarhus Convention, most notably its Art. 9.3. For this reason, we find Art. 2.1.g of the Aarhus Regulation ("'administrative act' means any measure of individual scope under environmental law, taken by a Community institution or body, and having legally binding and external effects") **overly burdensome and imposing extra criteria that do not stem from the Aarhus Convention** or the need for implementation thereof by the European Union.

2.4. Art. 9.3 of the Aarhus Convention requires that an act should be "acts and omissions by private persons and public authorities" in order to be reviewable in an administrative or judicial procedure. The Aarhus Convention does not even require that such an act be an official administrative act, an act performed by an agency, a body or an institution of a central or local government having authoritative powers. The act that the Aarhus Convention is talking about is simply a form of behavior which – in order to give rise to a successful claim – has to contravene national environmental law.

2.5. Any other interpretation of the Aarhus Convention would result in an *ad absurdum* situation therefore cannot prevail. To require any form of official feature or demand that the act or omission mentioned in Art. 9.3 of the Aarhus Convention be an official resolution (or the lack thereof) of a body entitled by law would simply go counter even the simplest literal interpretation of Art. 9.3. In case the administrative or judicial review foreseen by the Aarhus Convention is to be exercised against "acts [...] by private persons", such a requirement would be meaningless or even nonsense. For all these reasons, any legislative framework that properly implements the Aarhus Convention has to take these conditions into consideration. And for the same reasons, no legal system (be it a national legal system or the one of a supranational organization) can introduce additional requirements for acts and omissions in order to make them eligible for administrative or judicial review. Otherwise that legal system is contrary to the Aarhus Convention and as such, unlawful.

2.6. This was exactly the finding of the General Court of the European Union in its judgments in the case **T-338/08** (Stichting Natuur en Milieu, established in Utrecht (Netherlands), Pesticide Action Network Europe, established in London (United Kingdom) v the European Commission)[1]. As the Court found

> "76. It must be held that an internal review procedure which covered only measures of individual scope would be very limited, since acts adopted in the field of the environment are mostly acts of general application. In the light of the objectives and purpose of the Aarhus Convention, such limitation is not justified.
>
> 79. It follows that Article 9(3) of the Aarhus Convention cannot be construed as referring only to measures of individual scope.
>
> 83. It follows from the above that Article 9(3) of the Aarhus Convention cannot be construed as referring exclusively to measures of individual scope. Consequently, in so far as Article 10(1) of Regulation No 1367/2006 limits the concept of 'acts', as used in Article 9(3) of the Aarhus Convention, to 'administrative act[s]' defined in Article

[1] Case T-338/08 Stichting Natuur en Milieu, established in Utrecht (Netherlands), Pesticide Action Network Europe, established in London (United Kingdom) v the European Commission

2(1)(g) of Regulation No 1367/2006 as 'measure[s] of individual scope', it is not compatible with Article 9(3) of the Aarhus Convention."

2.7. We may conclude with certainty that the arguments of the Defendant i.e. the Communication is not an act of individual scope within the meaning of Article 10 of the Aarhus Regulation are not substantiated and therefore should be discarded by the Honorable Court.

2.8. The Applicant opines that the same logic and the same reasoning has to be applied to the counterargument of the Defendant i.e. the Communication is not an act adopted by an EU institution having legally binding effects.

2.9. First of all, the Applicant believes that the counterargument of the Defendant has been formulated in a misleading manner, and most probably the Defendant does not deny that the Communication was adopted by an EU institution. The Applicant therefore will not enter into discussions on this question.

2.10. As the Defendant had probably meant, the Communication was adopted by an EU institutions but not in the form of an official act having legally binding effects. While the Applicant accepts the arguments the communications as such, in the context of EU law, despite they being part of the acquis (and the environmental acquis in case they are environmental), do not constitute legally binding norms, the Applicant firmly believes that this is not a valid requirements and that such extra condition goes again counter the Aarhus Convention.

2.11. In the Applicant's understanding, an administrative act does not have to have a legally binding effect in order to be eligible for a Request for Internal Review. Using analogy from the cases of the General Court **T-338/08** and **T-396/09**[2], this (the requirement to be legally binding) is again an unnecessary extra condition, contrary to the

[2] Case T-396/09 Vereniging Milieudefensie and Stichting Stop Luchtverontreiniging Utrecht v European Commission

spirit and letter of the Aarhus Convention, that cannot be accepted as valid and substantiated. Using the language of the aforementioned judgment of the General Court, Article 9(3) of the Aarhus Convention cannot be construed as referring only to measures having legally binding effect and so far as Article 10(1) of Regulation No 1367/2006 limits the concept of 'acts', as used in Article 9(3) of the Aarhus Convention, to 'act[s]' defined in Article 2(1)(g) of Regulation No 1367/2006 as 'having legally binding [...] effects', it is not compatible with Article 9(3) of the Aarhus Convention.

3. Substance of the claim – unlawfulness of the Commission Communication

3.1. Failure of public participation on the Renewable Energy Strategy to comply with the Aarhus Convention

3.2. The adoption of the Commission Communication was preceded by a public consultation period. The consultation conducted in early 2012 in relation to the Renewable Energy Strategy stated:

> "*The legislative framework as regards renewable energy is laid down in the Renewable Energy Directive which sets an obligatory target of 20% renewable energy in final energy consumption as well as a 10% target in transport for 2020. Given the long-term perspective of investors it is necessary already now to look beyond that year. Against the background of the EU's ambition to move towards a reduction of 80-95% of GHG emissions in a 2050 perspective, it is clear that a further strong growth in renewables will be needed beyond the 2020 targets.*"

3.3. Within the context of the Aarhus Convention, the Commission[3] made it clear in that the Renewable Energy Strategy was a major policy initiative. In addition this Strategy seeks to not only support the implementation of the existing 20% by 2020 renewable

[3] http://ec.europa.eu/energy/renewables/consultations/doc/20120207_renewable_energy_strategy.pdf and http://europa.eu/rapid/pressReleasesAction.do?reference=IP/12/571&format=HTML&aged=0&language=en&guiLanguage=en

energy programme[4], but extend it beyond 2020. It therefore sets the framework for future development of projects related to renewable energy and incentivises investment in these projects. The public participation on this Strategy therefore falls within the remit of Article 7 of the Convention on plans and programmes relating to the environment and in particular Article 6 paragraphs 3, 4 and 8 of the Convention as referenced by Article 7.

3.4. The following applied in relation to failures with regard to these terms of the Convention.

3.5. The Renewable Energy Strategy is associated with very significant environmental impacts on Europe's rural population, where the infrastructure is to be built, while its enormous costs have to be carried by all energy consumers. In Article 2 of the Annex to **Commission Decision 2008/401/EC**[5], which defines the rules of procedure for application of the Aarhus Regulation, **COM(2002)704**[6] is defined as the means for implementing public participation:

> *"Towards a reinforced culture of consultation and dialogue - General principles and minimum standards for consultation of interested parties by the Commission". This requires "for consultation to be equitable, the Commission should ensure adequate coverage of the following parties in a consultation process:*
>
> - *those affected by the policy*
> - *those who will be involved in implementation of the policy, or*
> - *bodies that have stated objectives giving them a direct interest in the policy."*

3.6. There was a failure in this consultation process to contact and inform the general public, who would be affected by this decision-making. Indeed, as the Aarhus Convention defines in Article 2 (5)*: "The public concerned" means the public affected or likely to be*

[4] Directive 2009/28/EC
[5] http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2008:140:0022:0025:EN:PDF
[6] http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2002:0704:FIN:en:PDF

affected by, or having an interest in, the environmental decision-making. In this regard it must be pointed out that the language of the consultation was in English, which is the native tongue of less than 70 million of the 470 million in the EU-27.

3.7. In late 2012, the European Parliament's Energy Committee was assessing proposals to expand the EU's current 20% renewable energy share, based on their draft report on "Current challenges and opportunities for renewable energy on the European energy market 2012/2259(INI)". As the documentation file for the European Parliament shows[7], the Commission's Communication COM(2012)271 on Renewable Energy: a major player in the European energy market, was a key non-legislative basic document in this process. Furthermore, the European Economic and Social Committee has prepared under Article 304 (TFEU) an Opinion (2013/C 44/24) on this Communication COM(2012)271[8].

3.8. Article 6 paragraph 4 of the Aarhus Convention is clear in that: *"Each Party shall provide for early public participation, when all options are open and effective public participation can take place".* Failure to ensure effective public participation at this stage in the further development of the renewable energy programme is a non-compliance with the Convention.

3.9. Article 6 paragraph 8 of the Aarhus Convention requires that: *"Each Party shall ensure that in the decision due account is taken of the outcome of the public participation".* In the consultation on the Renewable Energy Strategy this did not occur. Page 12 of COM(2002)704 in relation to the provision of feedback states:

> *"The Commission reiterates that the main mechanism for providing feedback to participants in consultations will be through an official Commission document to be approved by the College of Commissioners, i.e., in particular, the explanatory memoranda accompanying legislative proposals."*

[7] http://www.europarl.europa.eu/oeil/popups/ficheprocedure.do?lang=en&reference=2012/2259(INI)
[8] http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2013:044:0133:0139:EN:PDF

"The idea of providing feedback on an individual basis (feedback statements), as requested by some contributions, is not compatible with the requirement of effectiveness of the decision-making process. Moreover, interested parties should keep in mind that the Commission's decision-making is based on the principle of collegiality, that is to say only the College of Commissioners is entitled to weigh up the pros and cons put forward in a consultation process and to adopt a final position in the Community interest."

3.10. In contrast the "**Arhus Convention: An Implementation Guide**" is clear in Page 109 in relation how "each Party shall ensure that in the decision due account is taken of the outcome of the public participation[9]":

"The relevant authority is ultimately responsible for the decision based on all information, including comments received, and should be able to show why a particular comment was rejected on substantive grounds."

3.11. The submissions of EPAW and others, which pointed out the environmental, economic and legal failings of the EU's Renewable Energy Strategy were ignored in the final decision, neither was there a record of how particular comments and their technical content was evaluated. With regard to **COM(202)704** and the requirement to ensure 'adequate coverage' as previously highlighted; EPAW is an organisation representing 584 groups throughout Europe, which are either:

- opposing one or more wind farm proposals;
- or questioning the effectiveness of wind farms as a tool for solving the problems of man and the planet;
- or defending the flora, fauna and landscapes from damage caused by wind farms, directly or through environmental degradation such as erosion, water contamination and bush fires;

[9] http://www.unece.org/fileadmin/DAM/env/pp/acig.pdf

- or generally fighting against the damaging effects of wind farms on tourism, the economy, people's quality of life, the value of their properties and, increasingly often, their health;
- or a combination of the above.

3.12. None of their views expressed in the submission were accounted for in the summary documentation of the Consultation or the final Communication **COM(2012)271** on Renewable Energy.

3.13. Note: In Communication **ACCC/C/2012/68**[10] at the Aarhus Convention Compliance Committee, the above matter is currently under investigation by the Compliance Committee.

3.14. Failure of the Defendant to comply with the Aarhus Regulation

3.15. While the lack of proper public consultation is primarily a breach of the Aarhus Convention Art. 7, it also constituted the breach of Art. 9 of the Aarhus Regulation.

3.16. Art. 9 of the Aarhus Regulation is the implementation of Art. 7 of the Aarhus Convention to EU level plans and programmes (of EU institutions). In the understanding of the Applicant, the contested Commission Communication is a plan or programme in the meaning of Directive 2001/42/EC and thus falls under the scope of the Aarhus Regulation Art. 9.

3.17. The contested Commission Communication is a plan or programme because it was

- subject to preparation and/or adoption by an authority at national, regional or local level or which are prepared by an authority for adoption, through a legislative procedure by Parliament or Government (Art. 2.a of Directive 2001/42/EC): the

[10] http://www.unece.org/env/pp/compliance/compliancecommittee/68tableeuuk.html

Communication was prepared by the European Commission and commented by the European Parliament, while eventually adopted by the European Commission;

- required by legislative, regulatory or administrative provisions: (Art. 2.a of Directive 2001/42/EC): the preparation and adoption of the Communication was foreseen and required by Art. 23.7, 23.8 and 23.9 of Directive 2009/28/EC (Renewable Energy Directive).

3.18. As such, the preparation of the Commission Communication should have been subject to the following requirements from the Aarhus Regulation:

PUBLIC PARTICIPATION CONCERNING PLANS AND PROGRAMMES RELATING TO THE ENVIRONMENT

Article 9

1. Community institutions and bodies shall provide, through appropriate practical and/or other provisions, early and effective opportunities for the public to participate during the preparation, modification or review of plans or programmes relating to the environment when all options are still open. In particular, where the Commission prepares a proposal for such a plan or programme which is submitted to other Community institutions or bodies for decision, it shall provide for public participation at that preparatory stage.

2. Community institutions and bodies shall identify the public affected or likely to be affected by, or having an interest in, a plan or programme of the type referred to in paragraph 1, taking into account the objectives of this Regulation.

3. Community institutions and bodies shall ensure that the public referred to in paragraph 2 is informed, whether by public notices or other appropriate means, such as electronic media where available, of:

(a) the draft proposal, where available;

(b) the environmental information or assessment relevant to the plan or programme under preparation, where available; and

(c) practical arrangements for participation, including:

(i) the administrative entity from which the relevant information may be obtained,

(ii) the administrative entity to which comments, opinions or questions may be submitted, and

(iii) reasonable time-frames allowing sufficient time for the public to be informed and to prepare and participate effectively in the environmental decision-making process.

4. A time limit of at least eight weeks shall be set for receiving comments. Where meetings or hearings are organised, prior notice of at least four weeks shall be given. Time limits may be shortened in urgent cases or where the public has already had the opportunity to comment on the plan or programme in question.

5. In taking a decision on a plan or programme relating to the environment, Community institutions and bodies shall take due account of the outcome of the public participation. Community institutions and bodies shall inform the public of that plan or programme, including its text, and of the reasons and considerations upon which the decision is based, including information on public participation.

3.19. Failure of the Renewable Energy Strategy, in particular its Impact Assessment, to address the serious non-compliances which are occurring with the implementation of the renewable energy programme in relation to Community law on the environment

3.20. In the Communication COM(2012)0271 on Renewable Energy: a major player in the European energy market, the Impact Assessment document **SWD(2012)149 final**[11], presents a position of compliance with Community law on the environment;

"*infrastructure development follows well established environmental rules (including Strategic Environmental Assessment and Environmental Impact Assessment)*".

3.21. If we consider the National Renewable Energy Action Plans (NREAPs) prepared by the Member States to comply with Article 4 of Directive 2009/28/EC, then these are based

[11] http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=SWD:2012:0149:FIN:EN:PDF

on a template prepared by the EU Commission, namely C(2009)5174-1[12]. Section 5.3 of the NREAP template was entitled 'Assessment of the Impacts', while Section 5.4 referred to the preparation of the NREAP and in particular Section 5.4 (c) stated: *"Please explain the public consultation carried out for the preparation of this Action Plan"*. An examination of the NREAPs submitted by the Member States[13] shows that nineteen simply failed to provide any information in relation to Section 5.3, while the others provided little or no information. No assessments of the considerable environmental, technical and economic impacts associated with this programme occurred. Furthermore, Sections 5.3 (c) of the NREAPs demonstrated that the public participation conducted by the Member States were limited.

3.22. In Communication **ACCC/C/2010/54**[14] the UNECE Compliance Committee in its findings of August 2012 determined that the EU as a Party to the Convention:

> By not having in place a proper regulatory framework and / or clear instructions to implement Article 7 of the Convention with respect to the adoption of NREAPs by Member States on the basis of Directive 2009/28/EC has failed to comply with Article 7 of the Convention;
>
> By not having properly monitored the implementation by Ireland of Article 7 of the Convention in the adoption of Ireland's NREAP also has failed to comply with Article 7 of the Convention;
>
> By not having in place a proper regulatory framework and / or clear instructions to implement Article 7 of the Convention with respect to the adoption of NREAPs by Member States on the basis of Directive 2009/28/EC has failed to comply also with Article 3, paragraph 1, of the Convention;

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[12] http://ec.europa.eu/energy/renewables/doc/nreap__adoptedversion__30_june_en.pdf

[13] http://ec.europa.eu/energy/renewables/action_plan_en.htm

[14] http://www.unece.org/env/pp/compliance/Compliancecommittee/54TableEU.html

3.23. The EU Commission has so far failed to comply with the findings and recommendation of the UNECE Compliance Committee. Indeed in EPAW's Complaint 1892/2012/VL the EU is being investigated with regard to the following allegation:

> "*The Commission has failed to ensure that the Republic of Ireland carried out a strategic environmental assessment pursuant to Directive 2001/42/EC, prior to adopting its National Renewable Energy Action Plan based on Directive 2009/28/EC.*"

3.24. In Ireland for example no such Strategic Environmental Assessment (SEA) was ever completed for the renewable energy programme. In their reply on this complaint of the 4th December 2012[15], the EU Commission stated:

> "*In case a Member State has decided not to include in its NREAP specific mandatory measures to comply with, a SEA is not required at that stage. However, when implementing the NREAP, as appropriate, through more specific plans (e.g. national/regional energy programmes) setting the framework for future development consent of projects, SEAs will have to be carried out. Member States were explicitly informed of the above view of the Commission's services in e-mail correspondence of 7 July 2010, which was jointly signed by the responsible Heads of Unit in DG Energy and DG Environment.*"

3.25. Note: This e-mail correspondence occurred some seven days after the Member States had formally notified their NREAPs to the Commission and some five months after the absence of Strategic Environmental Assessments had been raised by a Member State[16]. With regard to the above explanation by the Commission, it is necessary to point out that Article 4 (1) of Directive 2009/28/EC states:

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[15] ENER/C 1/JB// 0(2012)1500957

[16] http://www.unece.org/fileadmin/DAM/env/pp/compliance/C2010-54/Correspondence%20with%20communicant/Response_08.01.2012/frCommC54LetterIrishAd2ECreNREAP.pdf

"The National Renewable Energy Action Plans shall set out Member States' national targets for the share of energy from renewable sources [...] adequate measures to be taken to achieve those national overall targets, including cooperation between local, regional and national authorities, planned statistical transfers or joint projects, national policies to develop existing biomass resources and mobilise new biomass resources for different uses."

3.26. While Article 3 of the Directive is entitled:

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

3.27. Furthermore, in the NREAP template produced by the EU Commission C(2009) 5174-1, the introduction is clear:

"The purpose of the template is to ensure that NREAPs are complete, cover all the requirements laid down in the Directive."

3.28. It goes without saying that the most important element of the Directive is the 'mandatory national overall targets'. The NREAPs then are mandatory plans, they are not optional.

3.29. Article 3(2)(a) of the Directive on Strategic Environmental Assessment 2001/42/EC, requires that such a detailed assessment and public participation be completed for programmes, which lead to future development consent of a range of energy infrastructure included in the Directive on Environmental Impact Assessment[17], such as wind farms.

3.30. With regard to the NREAP leading to future development consent; sectoral targets are set in Section 3, the measures for achieving those targets are set in Section 4, in

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[17] Directive 85/337/EEC as amended

particular those for the electricity infrastructure development in Section 4.2.6 and the support schemes in Section 4.3, while in Section 5, the contribution of each renewable technology is defined; as the template states:

> "*For the electricity sector, both the expected (accumulated) installed capacity (in MW) and yearly production (GWh) should be indicated by technology.*"

3.31. To summarise, the NREAP is a ten year plan in which defined infrastructure is to be financially supported and brought through the regulatory framework. It therefore sets out the framework for future development consent. Article 4(1) of Directive 2009/28/EC requires that:

> "*Each Member State shall **adopt** a national renewable energy action plan.*"

3.32. While Article 4(1) of Directive 2001/42/EC states that:

> "*The environmental assessment referred to in Article 3 shall be carried out during the preparation of a plan or programme and **before its adoption** or submission to the legislative procedure.*"

3.33. The NREAPs have never been adopted in accordance with the Community legal framework on the environment; the necessary Strategic Environmental Assessments were simply by-passed as there was insufficient time made available for their completion.

3.34. Furthermore, in the case of Ireland and the reply of the EU Commission of the 4th December 2012, the Commission claimed in relation to the absence of Strategic Environmental Assessment for the NREAP: "*Such assessments have been or are in the process of being carried out in relation to the implementation of Ireland's renewable energy programme at subsequent stages by other plans*".

"*Each county in Ireland is required to undertake a* ***county development plan.*** *The development plan sets the framework for the development of the local authority's area over its six year lifespan. Among other things, local authorities are required to have regard to the Wind Energy Development Guidelines developed by the Department of Environment in putting together their county development plan. Strategic environmental assessments of the likely environmental effects of implementing the plans are undertaken.*"

3.35. The actual reality is that county development plans have indeed been completed, but there is an absence of a Strategic Environmental Assessment for the wind energy development included in these plans. This is not a situation limited to Ireland, in Communication ACCC/C/2012/68 in relation to the Scottish renewable energy programme, despite over a thousand wind turbines having being built there as part of the renewable energy programme, both the Scottish administration's 2020 Routemap for Renewable Energy in Scotland and Strategic Environmental Assessment are still in the draft stage. This matter is being currently investigated further by the Compliance Committee in Communication ACCC/C/2012/68. Similar issues are to be found in relation to Strategic Environmental Assessments throughout the Member States.

3.36. In relation to the Directive on Environmental Impact Assessment, this is not been adhered to with regards to the approval of renewable energy projects throughout the EU. In particular, major deficiencies are to be found with the implementation of Article 11 of the codified Directive[18]. In the case of Ireland and the UK, access to justice provisions simply do not meet the requirements of the Directive and the Aarhus Convention[19], while throughout the EU major barriers to access to justice remain, not least being the case of costs. A point acknowledge by the recent report prepared for the EU Commission itself[20]. Citizens in rural communities throughout Europe are effectively finding themselves

[18] 2011/92/EC: http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2012:026:0001:0021:EN:PDF

[19] Formal notice in relation to Ireland and proceedings against the UK: http://ec.europa.eu/eu_law/eulaw/decisions/dec_20120531.htm#ie and http://europa.eu/rapid/press-release_IP-11-439_en.htm

powerless when confronted with well-funded developers and planning departments rushing through the approvals of wind farms.

3.37. Therefore infrastructure development is not following well established environmental rules, including Strategic Environmental Assessment and Environmental Impact Assessment, a point raised by EPAW in its submission and ruled on by the UNECE Compliance Committee, but ignored by the EU Commission in Communication COM(2012)271.

IV. Summary of the claim, date and signature by attorney

The Applicant requests the Honorable General Court to declare the contested measures (Commission Communication COM(2012)271 and the Response of the Commission No. AG/ss ener.c.l(2012)1664829 made by the Defendant null and void.

Done in Budapest, Hungary, on 18 March 2013 on behalf of the Applicant, signed by dr. Csaba Kiss licensed private attorney at law.

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on behalf of the Applicant

[20] http://ec.europa.eu/environment/aarhus/pdf/2012_access_justice_report.pdf