

# European Ombudsman

## Complaint form

### Complaint about maladministration

Complaint submitted on: 21 July 2013

#### European Ombudsman

**First name:** Joseph  
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**On behalf of (if applicable):** Turn 180  
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**Against which European Union (EU) institution or body do you wish to complain?**

European Commission

**What is the decision or matter about which you complain? When did you become aware of it? Add annexes if necessary.**

On the 22<sup>nd</sup> January 2013 a Complaint was made in relation to the Public Participation conducted by DG Energy of the EU Commission on the Projects of Common Interest and the failure to provide access to Environmental Information Requested. The relevant public participation can be found at the link below:

- [http://ec.europa.eu/energy/infrastructure/consultations/20120620\\_infrastructure\\_plan\\_en.htm](http://ec.europa.eu/energy/infrastructure/consultations/20120620_infrastructure_plan_en.htm)

This access to information aspect of this complaint was accepted by the EU Ombudsman for consideration as 0181/2013/(JF)RT and is currently being progressed. However, the wider issue of the conduct of the public participation above was not addressed as according to the Ombudsman's service, the "complaint must be preceded by appropriate administrative approaches to the institutions, bodies, offices or agencies concerned". This has since occurred; please see attached correspondence to the DG Energy dated 4<sup>th</sup> March. No reply has since been received and more than fifteen working days has passed.

With regard to the public participation above, this falls under Article 9(1) of the Aarhus Regulation 1367/2006.

- *"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".*

The definition of a plan or programme is defined in Article 2(1)(e) of the Aarhus Regulation 1367/2006.

*(e) 'plans and programmes relating to the environment' means plans and programmes,*

- (i) which are subject to preparation and, as appropriate, adoption by a Community institution or body;*
- (ii) which are required under legislative, regulatory or administrative provisions; and*
- (iii) which contribute to, or are likely to have significant effects on, the achievement of the objectives of Community environmental policy, such as laid down in the Sixth Community Environment Action Programme, or in any subsequent general environmental action programme.*

If we consider the consultation documentation in the link above, then it refers to the energy infrastructure package, comprising:

- *A proposal for a Regulation on guidelines for trans-European energy infrastructure [COM/2011/658], and;*
- *A proposal for a Regulation on the Connecting Europe Facility covering Energy, Transport and Telecommunication infrastructure (2014-2020) [COM/2011/665] was published on 19 October 2011 and is currently under discussion in the European Parliament and the Council.*

It is also necessary to point out that an examination of the introduction to COM/2011/658 shows:

- *“Electricity networks must be upgraded and modernised to meet increasing electricity demand due to a major shift in the overall energy value chain and mix. The grids must also be urgently extended and upgraded, including through electricity highways, to foster market integration and maintain the existing levels of system’s security, but especially to transport and balance electricity generated from renewable sources, which is expected to more than double in the period 2007-2020. At the same time, reaching the EU’s 2020 energy efficiency and renewable energy targets will not be possible without more innovation and intelligence in the networks at both transmission and distribution level, in particular through information and communication technologies”.*

With regard to the context of Article 2(1)(e) of the Aarhus Regulation, this consultation related to a plan / programme of DG Energy which was under preparation as part of its administrative provisions and was connected with the Community’s environmental policy as defined above. In particular as the introduction to COM/2011/658 demonstrates, it *“aims at implementing these priorities by:*

*- streamlining permit granting procedures to significantly reduce their duration for projects of common interest and increase public participation and acceptance for the implementation of such projects;*

*- facilitating the regulatory treatment of projects of common interest in electricity and gas by allocating costs depending on the benefits provided and ensuring allowed returns are in line with risks incurred;*

*- ensuring implementation of projects of common interest by providing necessary market-based and direct EU financial support. In this latter regard, the proposal provides the basis for eligibility of projects of common interest for EU financial assistance under the "Connecting Europe Facility", which is subject to a separate legislative proposal.*

*The proposal is a strategic priority in the Commission Work Programme for 2011".*

Within the Irish context and environmental information was sought on the 20<sup>th</sup> August 2012 under Regulations 1367/2006 and 1049/2001, for the Electricity Projects E149, E150, E151, E152, E153, E154, E155, E156 & E291 as listed in:

- [http://ec.europa.eu/energy/infrastructure/consultations/doc/20120725\\_electricity\\_with\\_marked\\_changes\\_wip.pdf](http://ec.europa.eu/energy/infrastructure/consultations/doc/20120725_electricity_with_marked_changes_wip.pdf)

As part of the implementation of the EU's 20% renewable energy target through Directive 2009/28/EC, while Ireland has not adopted its National Renewable Energy Action Plan (NREAP) in a manner which is compliant with its obligations under Directive 2001/42/EC on Strategic Environmental Assessment, it has notified this NREAP to the Commission on the 30<sup>th</sup> June 2010 and is currently implementing it, albeit not in a manner which is legally compliant. See Complaint 1892/2012/VL from the European Platform Against Wind Farms (EPAW). Indeed, Ireland has also notified its progress report on the NREAP to the EU Commission in December 2011. As the progress report from Ireland states in Section 11.1:

- "Ireland is actively involved in exploring the possibilities provided for in the co-operation mechanisms under the Renewable Energy

*Directive. As stated in the NREAP, we have considerable potential, particularly in the offshore renewable energy area for the export of renewable generation”.*

Indeed if we consider the NREAP, this foresees 7,145 MW of wind energy to be built in the Republic of Ireland, for which 2,496 MW is for export, which is of course connected with the Projects of Common Interest highlighted above. In essence therefore, this plan or programme is already progressing and is not as the Commission asserts in its documentation at an initial phase. Commercial companies are responding to the business opportunities, which have already been created for them, while the public in the regions where these projects are to be built have simply not been informed.

In this regard with respect to the Irish NREAP, the UNECE Aarhus Convention Compliance Committee has already ruled in Communication ACCC/C/2010/54 that it did not comply with the public participation requirements of Article 7 of the Convention, while neither has any Strategic Environmental Assessment of the renewable programme and associated public participation been completed. Despite this the Commission has refused to comply with the findings and recommendations of the Compliance Committee and enforce the necessary measures related to Strategic Environmental Assessment. Now with these Projects of Common Interest it is further advancing the development of wind energy in Ireland, without informing the public there of the projects to be built; note in the case of E156 above several thousand 185 m high turbines in the Irish midlands.

With regard to the Aarhus Regulation 1367/2006 the following Sections of Article 9 apply:

*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.*

These measures are also to be seen in COM (2002)704 “Towards a reinforced culture of consultation and dialogue - General principles and minimum standards for consultation of interested parties by the Commission”. Indeed Part B of the minimum standards state:

- *“When defining the target group(s) in a consultation process, the Commission should ensure that relevant parties have an opportunity to express their opinions”.*

Furthermore, Article 11 of the Treaty of Lisbon states:

- *2. The institutions shall maintain an open, transparent and regular dialogue with representative associations and civil society.*
- *3. The Commission shall carry out broad consultations with parties concerned in order to ensure that the Union’s actions are coherent and transparent.*

Name	Size	Content type
<a href="#">Attachment 2- Answer GESTDEM2013 1822 MConroy.pdf</a>	355435	application/pdf

**What do you consider that the EU institution or body has done wrong?**

Failed to conduct the public participation for Projects of Common Interest in accordance with European legislation.

See response from DG Energy dated 7th May 2013. DG Energy failed to provide any examples of how the population of the Midlands in Ireland were informed of the public consultation.

**What, in your view, should the institution or body do to put things right?**

In this regard the Complaint of the 22<sup>nd</sup> January 2013 stated with regard to the Projects of Common Interest:

- Re-open the public consultation and ensure that the environmental information is available to the communities affected.
- Halt the legislative process in relation to Projects of Common Interest until all of the above have been adequately resolved.

Indeed no projects should be further progressed or supported, financially or otherwise until full compliance with the legislative framework has been achieved. In this regard notice is drawn to the findings and recommendations of the UNECE Aarhus Convention Compliance Committee in Communication ACCC/C/2010/54 and the requirements of Directive 2001/42/EC on Strategic Environmental Assessment.

**Have you already contacted the EU institution or body concerned in order to obtain redress?**

No

**If the complaint concerns work relationships with the EU institutions and bodies: have you used all the possibilities for internal administrative requests and complaints provided for in the Staff Regulations? If so, have the time limits for replies by the institutions already expired?**

Not applicable

**Has the object of your complaint already been settled by a court or is it pending before a court?**

No

**Please select one of the following two options after having read the information in the box below:**

Please treat my complaint publicly

**Do you agree that your complaint may be passed on to another institution or body (European or national), if the European Ombudsman decides that he is not entitled to deal with it?**

Yes

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