To: EU Ombudsman Complaint 240/2014/SID
From: Joe Caulfield
Date: 15/7/2014
Re: Response to Letter Received from EU Ombudsman on 03/07/2014 and request for observations

Attachment 1: Energie - Give us your opinion
Attachment 2: Verfügbare Sprache - Europäische Kommission

1. THE COMMISSION'S COMMENTS TO THE COMPLAINANT'S ARGUMENTS

1.1 Plan or Programmes Related to the Environment and the Aarhus Convention

With regard to the Reply received from Commissioner Oettinger dated 30th June 2014, which you sent to me for observations, I would first like to highlight the claim:

- *Each PCI will have to undergo a complete permit granting process and it will have to be subject to a project-specific public consultation aimed at stakeholders likely to be directly affected by it, including landowners, citizens living in the vicinity of the project, and general public. These requirements constitute the safeguard that local communities and citizens will be involved in the implementation process and will be able to make their views heard by project promoters and national authorities. The outcome of the permit granting process, including public consultations, and of the environmental assessments will have to be taken into account by national authorities when issuing comprehensive decisions determining whether a project promoter is (or is not) to be granted an authorisation to build the PCI infrastructure.*

It seems the Commissioner Oettinger and his staff have a real problem with the legislation they are duty bound to comply with, namely that related to plans and programmes on the environment. Are the Projects of Common Interest, its supporting regulation and official documentation not a 'plan or programme related to the environment'? This is the first step in public participation, which has to be adhered to, before consideration can even be given to implementing any downstream projects, such as in the statement above. After all we haven't even approached the situation in law, where it has even been determined that this plan or programme in the first place is even suitable and legally compliant.

As way of background, on 14 October 2013, the European Commission adopted a list of 248 key energy infrastructure projects[1]. These projects were selected by twelve regional groups established by the new guidelines for trans-European energy infrastructure (TEN-E). Carrying the label "Projects of Common Interest" (PCI), the aim is that they are to benefit from faster and more efficient permit granting procedures and improved regulatory treatment. They may also have access to financial support from the Connecting Europe Facility (CEF), under which a €5.85 billion budget has been allocated to trans-European energy infrastructure for the period 2014-20. However, is this situation, done essentially unilaterally even remotely legal?

[1] http://ec.europa.eu/energy/infrastructure/pci/pci_en.htm

As part of the Projects of Common Interest, the EU adopted Regulation No 347/2013 on guidelines for trans-European energy infrastructure and repealing Decision No 1364/2006/EC and amending Regulations (EC) No 713/2009, (EC) No 714/2009 and (EC) No 715/2009[2]. Extensive reference is made in the recitals to accelerated permitting arrangements, while recital (42) clarifies the situation with regard to allocation of financial resources:

- *Projects of common interest in the fields of electricity, gas and carbon dioxide should be eligible to receive Union financial assistance for studies and, under certain conditions, for works as soon as such funding becomes available under the relevant Regulation on a Connecting Europe Facility in the form of grants or in the form of innovative financial instruments. This will ensure that tailor-made support can be provided to those projects of common interest which are not viable under the existing regulatory framework and market conditions.*

Indeed, there is no ambiguity in Article 1 of the Regulation on "subject matter and scope", which defines the situation clearly:

(1) This Regulation lays down guidelines for the timely development and interoperability of priority corridors and areas of trans-European energy infrastructure set out in Annex I ('energy infrastructure priority corridors and areas').

(2) In particular, this Regulation:
(a) addresses the identification of projects of common interest necessary to implement priority corridors and areas falling under the energy infrastructure categories in electricity, gas, oil, and carbon dioxide set out in Annex II ('energy infrastructure categories');
(b) facilitates the timely implementation of projects of common interest by streamlining, coordinating more closely, and accelerating permit granting processes and by enhancing public participation;
(c) provides rules and guidance for the cross-border allocation of costs and risk-related incentives for projects of common interest;
(d) determines the conditions for eligibility of projects of common interest for Union financial assistance.

The "Aarhus Convention: An Implementation Guide"[3] second edition, in relation to Article 7 on public participation on plans and programmes related to the environment, states:

- *The Convention does not define the terms "plans", "programmes" and "policies". These terms do have common-sense and sometimes legal meanings throughout the ECE region.*

At the Meeting of the Parties of the Aarhus Convention on the 30th June 2014, the following was adopted[4]:

[2] http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2013:115:0039:0075:EN:PDF
[3] http://www.unece.org/fileadmin/DAM/env/pp/ppdm/Aarhus_Implementation_Guide_second_edition_-_text_only.pdf

[4] http://www.unece.org/fileadmin/DAM/env/pp/mop5/Documents/In-session_docs/ece.mp.pp.2014.crp.1_e.pdf

- *2. Takes note of the Maastricht recommendations on promoting effective public participation in decision-making (ECE/MP.PP/2014/8) developed under the auspices of the Task Force, and invites Parties, Signatories, other interested States and stakeholders to use them as a guidance to improve implementation of the second pillar of the Convention;*

If we consider those Maastricht recommendations, then further clarification is provided, including the interface to Strategic Environmental Assessment (SEA) by:

154. While the Convention does not define "plans and programmes", a broad interpretation is recommended, covering any type of strategic decision:
(a) Which is regulated by legislative, regulatory or administrative provisions;
(b) Which is subject to preparation and/or adoption by an authority or prepared by an authority for adoption, through a formal procedure, by a parliament or a government;
(c) Which provides an organized and coordinated system that:
(i) Sets, often in a binding way, the framework for certain categories of specific activities;
(ii) Is usually not sufficient for any individual activity to be undertaken without an individual permitting decision.

155. The following types of plans and programmes may be considered as "relating to the environment":
(a) Those which "may have a significant effect on the environment" and require SEA, for example, water management programmes, urban development plans, regional and local waste management plans, national energy strategies and plans;
(b) Those which "may have a significant effect on the environment" but do not require SEA, for example, those that do not set the framework for a development consent, like incentives programmes;
(c) Those which "may have effect on the environment" but the effect is not "significant", for example, those that determine the use of small areas;
(d) Those intended to help to protect the environment, for example, national biosafety strategies, air management plans, nature conservation plans, emergency plans for hazardous activities/installations, or anti-smog programmes;
(e) Financial plans affecting the environment.

In relation to the above, one only has to examine the nature of the projects adopted and Article 1 of the Regulation No 347/2013 to come to the utterly obvious conclusion that the Projects of Common Interest are a plan or programme related to the Environment. As such therefore Article 7 of the Aarhus Convention applies.

- *Each Party shall make appropriate practical and/or other provisions for the public to participate during the preparation of plans and programmes relating to the environment, within a transparent and fair framework, having provided the necessary information to the public. Within this framework, article 6, paragraphs 3, 4 and 8, shall be applied. The public which may participate shall be identified by the relevant public authority, taking into account the objectives of this Convention.*

1.2 Article 9 of the Aarhus Regulation 1367 of 2006

As the Projects of Common Interest are a plan or programme related to the environment, Article 9 of the Aarhus Regulation 1367 of 2006 on Public Participation

on Plans and Programmes Related to the Environment also applies. This requires that:

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.*

Please Note: Article 9(4) of Regulation 1367/2006 does not directly transpose the provisions of Article 7 of the Convention, which requires that the '*necessary information*' be provided to the public, as opposed to the Regulation 1367/2006 and the provision of '*environmental information where available'*. As the Aarhus Convention: An Implementation Guide clarifies, the word "necessary" should be understood in the context of effective participation".

Given the enormous scale and impact of these 248 projects, the 'necessary information' should have course been comprehensive, at least addressing cost, environmental impacts, environmental mitigation measures, quantification of objectives and alternatives to reach them, etc. The parallel complaint to your office of

the EU Ombudsman, Complaint 0181/2013(RT)AN demonstrated that there was a refusal to provide any environmental information, despite repeated formal legal requests for the same in relation to the Irish Projects of Common Interest.

Recital (31) to Regulation No 347/2013 also clarifies:

- *The correct and coordinated implementation of Directive 2011/92/EU of the European Parliament and of the Council of 13 December 2011 on the assessment of the effects of certain public and private projects on the environment, of Directive 2001/42/EC of the European Parliament and of the Council of 27 June 2001 on the assessment of the effects of certain plans and programmes on the environment, where applicable, of the Convention on access to information, public participation in decision-making and access to justice in environmental matters, signed in Aarhus on 25 June 1998 (the 'Aarhus Convention'), and of the Espoo Convention on environmental impact assessment in a transboundary context (the 'Espoo Convention') should ensure the harmonisation of the main principles for the assessment of environmental effects, including in a cross-border context. Member States should coordinate their assessments for projects of common interest, and provide for joint assessments, where possible. Member States should be encouraged to exchange best practice and administrative capacity-building for permit granting processes.*

So let us take this step by step, these are not only huge projects requiring billions of Euros in funding and associated with major environmental impacts, but they are also all trans-boundary in nature. So where is the environmental impact assessment in accordance with the 'Espoo Convention'? After all as the UNECE website clarifies in relation to this Convention ratified by the EU and fully in force since 1997[5]:

- *The Espoo (EIA) Convention sets out the obligations of Parties to assess the environmental impact of certain activities at an early stage of planning.*

1.3 The UNECE (Kyiv) Protocol on SEA

One could also highlight the UNECE (Kyiv) Protocol on SEA, which was adopted by the Espoo Convention in 2003, which was ratified by the EU in November 2008 and is now in force since July 2010. Not only is this legally binding, but as the relevant UNECE website clarifies[6]:

- *Strategic environmental assessment (SEA) is undertaken much earlier in the decision-making process than project environmental impact assessment (EIA), and it is therefore seen as a key tool for sustainable development. The Protocol also provides for extensive public participation in government decision-making in numerous development sectors.*

Indeed the Kyiv Protocol is very similar to EU's own Directive on Strategic Environmental Assessment 2001/42/EC. The Kyiv Protocol in Article 4(2) defines that:

[5] http://www.unece.org/env/eia/eia.html
[6] http://www.unece.org/env/eia/sea_protocol.html

- *A strategic environmental assessment shall be carried out for plans and programmes which are prepared for agriculture, forestry, fisheries, **energy**, industry including mining, transport, regional development, waste management, water management, telecommunications, tourism, town and country planning or land use, and which set the framework for future development consent for **projects listed in annex I and any other project listed in annex II that requires an environmental impact assessment under national legislation.***

The PCI list for Ireland alone includes two projects which fall under the Annex I designation:

- *Large dams and reservoirs*

While Annex II designates:

- *Construction of overhead electrical power lines with a voltage of 220 kilovolts or more and a length of 15 kilometres or more and other projects for the transmission of electrical energy by overhead cables.*

- *Installations for the harnessing of wind power for energy production (wind farms).*

Not only are there quite a number of such Annex II projects in the PCI list for Ireland alone, but such projects fall under the legislative requirements of the EU's Directive on Environmental Impact Assessment 2011/92/EC[7]. So do the Projects of Common Interest set the 'framework for future development consent'? Well one might simply point out what can only be described as 'the bleeding obvious' with regards to repeated references in the regulation and supporting documentation to accelerated permitting granting processes, financing, etc.

However, it seems that yourselves in the EU Ombudsman have a 'severe problem' with this concept of 'setting the framework for future development consent'. If we take the European Platform Against Wind Farms (EPAW), an environmental organisation I fully support, they already raised with yourselves in the EU Ombudsman the situation in Ireland where the National Renewable Energy Action Plan (NREAP) has been found by the UNECE Compliance Committee to be non-compliant with the terms of the Convention[8] and the complete failure to complete a Strategic Environmental Assessment for the same renewable energy programme. In your Ombudsman's decision on case 1892/2012/VL[9], it was stated with regard to the SEA:

- *As a preliminary point, the Ombudsman recalls that the only body competent to provide a binding interpretation of EU law is the Court of Justice of the European Union. At this point in time, no such interpretation with respect to the issue in question appears to have yet been made by the Court of Justice.*

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

[8] http://www.unece.org/fileadmin/DAM/env/pp/mop5/Documents/Category_II_documents/ECE.MP.PP.2014.16_e.pdf

[9] http://www.ombudsman.europa.eu/de/cases/decision.faces/de/51946/html.bookmark

- *The Ombudsman notes that Article 3(2)(a) of Directive 2001/42/EC, invoked by the complainant, requires that an SEA be carried out for energy plans or programmes "which set the framework for future development consent of projects*".

- *It is indeed true that Directive 2009/28/EC requires Member States to include in their NREAPs adequate measures to be taken to achieve national overall targets. Nevertheless, the issue as to how specific these measures have to be would seem to be a matter of interpretation of Directive 2009/28/EC. In any event, the Ombudsman notes that this Directive does not appear to require, as regards the measures to be adopted, a level of specificity that would "set the framework for future development consent of projects" and, as a result, give rise to an obligation to carry out an SEA.*

Sadly yourselves in the EU Ombudsman don't seem to do your homework, particularly when it might result in the situation that you might actually have to do something about it as a result. The Judgment of the European Court on Terre Wallonne ASBL v. Région Wallone [2010] ECR I-5611[10] was very clear on the obligation of the National Courts, when it is determined that the Strategic Environmental Assessment Directive has not been complied with:

Where a national court has before it, on the basis of its national law, an action for annulment of a national measure constituting a 'plan' or 'programme' within the meaning of Directive 2001/42/EC of the European Parliament and of the Council of 27 June 2001 on the assessment of the effects of certain plans and programmes on the environment and it finds that the 'plan' or 'programme' was adopted in breach of the obligation laid down by that directive to carry out a prior environmental assessment, that court is obliged to take all the general or particular measures provided for by its national law in order to remedy the failure to carry out such an assessment, including the possible suspension or annulment of the contested 'plan' or 'programme'.

If one considers the Opinion of Advocate General Kokott of the European Court, as delivered on 4 March 2010 in *Terre wallonne ASBL (C-105/09) and Inter-Environnement Wallonie ASBL (C-110/09) v Région wallonne*[11], where it was necessary to consider the meaning of the terms "plan" and "programme" and the circumstances in which they set a 'framework for development consent' of projects, the Advocate General was very clear:

- *60. The term 'framework' must reflect the objective of taking into account the environmental effects of any decision laying down requirements for the future development consent of projects even as that decision is being taken.*

- *61. It is unclear, however, how strongly the requirements of plans and programmes must influence individual projects in order for those requirements to set a framework.*

- *62. During the legislative procedure the Netherlands and Austria proposed that it should be made clear that the framework must determine the location, nature or size of projects requiring environmental assessment. In other words, very specific, conclusive requirements would have been needed to trigger an*

[10] http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:62011CJ0041:EN:NOT

[11] http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:62009CC0105:EN:NOT

environmental assessment. As this proposal was not accepted, the concept of 'framework' is not restricted to the determination of those factors.

- *63. The view of the Czech Republic is based on a similarly narrow understanding of the setting of a framework. It calls for certain projects to be explicitly or implicitly the subject of the plan or programme*

- *64. Plans and programmes may, however, influence the development consent of individual projects in very different ways and, in so doing, prevent appropriate account from being taken of environmental effects. Consequently, the Strategic Environmental Assessment Directive is based on a very broad concept of 'framework'.*

- *65. This becomes particularly clear in a criterion taken into account by the Member States when they appraise the likely significance of the environmental effects of plans or programmes in accordance with Article 3(5): they are to take account of the degree to which the plan or programme sets a framework for projects and other activities, either with regard to the location, nature, size and operating conditions or by allocating resources (first indent of point 1 of Annex II). The term 'framework' must therefore be construed flexibly. It does not require any conclusive determinations, but also covers forms of influence that leave room for some discretion.*

- *66. … The wording [of point 1 of Annex II] implies that the various characteristics may be concerned in varying intensity and, therefore, possibly not at all. This alone is consistent with the objective of making all preliminary decisions for the development consent of projects subject to an environmental assessment if they are likely to have significant effects on the environment.*

- *67. To summarise, it can therefore be said that a plan or programme sets a framework in so far as decisions are taken which influence any subsequent development consent of projects, in particular with regard to location, nature, size and operating conditions or by allocating resources."*

Not only did the NREAPs and the NREAP template defined by the EU Commission C(2009) 5174-1[12] "set the framework for future development consent", but so too does the Projects of Common Interest and associated Regulation No 347/2013.

1.4 The current 'Modus Operandi'

Therefore, with these Projects of Common Interest, Article 7 of the Aarhus Convention applied on plans and programmes, Article 9 of Regulation 1367 of 2006 and the Kyiv Protocol to the Epsoo Convention on SEA. So where is the documentation and results of the mandatory public participation? After all as the Kyiv Protocol defines in Article 11 on "Decision":

1. Each Party shall ensure that when a plan or programme is adopted due account is taken of:
(a) The conclusions of the environmental report;
(b) The measures to prevent, reduce or mitigate the adverse effects identified in the environmental report; and

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

(c) The comments received in accordance with articles 8 to 10

It's not rocket science; you simply can't legally adopt such a plan and go into its implementation phase without first preparing the assessments and completing the public participation. Yet at the same time it is quite clear from their documentation that the EU Commission is currently actively pouring millions of Euros of public money into these so called Projects of Common Interest and their private developers[13].

It is also clear from their reply that the EU Commission has no intention of complying with their obligations of environmental assessment and public participation at the plan and programme level, just ram it through and by-pass that critical step. Let the developers take responsibility for pushing through each project at the local level, aided by the regulatory framework for accelerated permitting that they in the Commission have brought through in a manner which is not compliant with the law.

However, this is now an adopted 'modus operandi' and one you in the EU Ombudsman fully support. In the decision on case 1892/2012/VL, it was stated with regard to compliance with the Aarhus Convention:

- *With regard to Case ACCC/C/2010/54, the Aarhus Compliance Committee issued its findings to the Commission on 16 August 2012. On 31 August 2012, the Commission informed the complainant that it had commenced to reflect on how to address these findings. The Aarhus Compliance Committee, on 15 July 2013, asked the European Union for information to its follow-up, which is still to be assessed further. Therefore, given that the Aarhus Compliance Committee currently continues dealing with this matter, an inquiry into how the Commission has complied with the Aarhus Compliance Committee's findings would, at this stage, be premature.*

A ruling of non-compliance with the Convention, which is part of Community Legal Order is maladministration. However, you in the EU Ombudsman's office decided to do nothing about it and leave it instead to UNECE and the Communicant / Irish Public to enforce Community Law. In this regard it is necessary to point out that in the Meeting of the Parties on the Aarhus Convention held on the 30th June 2014[14]:

- *Based on the discussions under the preceding agenda items, the Meeting of the Parties formally adopted the following decisions with the agreed amendments by consensus: Decision V/9(g) on compliance by European Union (ECE/MP.PP/2014/L.16)*[15]

So clearly now it is also expected that the international community at the UN are expected to do your work in relation to non-compliance of the institutions of the European Union with its legal obligations, the failings of which on the NREAPs are now endorsed in International Law?

[13] http://ec.europa.eu/energy/infrastructure/events/doc/2013/20131119_cef_infoday_questions_answers.pdf

[14] http://www.unece.org/fileadmin/DAM/env/pp/mop5/Documents/In-session_docs/Aarhus_MOP-5List_of_key_decisions_and_outcomes_2.7.2014_ENG.pdf

[15] http://www.unece.org/env/pp/aarhus/mop5_docs.html

The recommendations of the Compliance Committee on ACCC/C/2010/54 are simply that of compliance with Article 7 and in particular the public having the option to participate when all options are open.

- *This would entail that the Party concerned ensure that the arrangements for public participation in its member States are transparent and fair and that within those arrangements* ***the necessary information is provided to the public****. In addition, such a regulatory framework and/or clear instructions must ensure that the requirements of article 6, paragraphs 3, 4 and 8, of the Convention are met,****including reasonable time frames, allowing sufficient time for informing the public and for the public to prepare and participate effectively, allowing for early public participation when all options are open, and ensuring that due account is taken of the outcome of the public participation.*** *Moreover, the Party concerned must adapt the manner in which it evaluates NREAPs accordingly;*

1.5 Legal Requirement in relation to 'when all options are open'

As regards the 'step by step' procedures in relation to 'when all options are open' and 'taking due account of the public participation', these were clarified in the Maastricht recommendations adopted in the Meeting of the Parties and referred to previously. In particular, these clarified:

- *2(b). The "zero option" means the option of not proceeding with the proposed activity, plan or programme at all nor with any of its alternatives.*

- *16. In line with the Convention's requirement for the public to have an opportunity to participate when all options are open,[16] the public should have a possibility to provide comments and to have due account taken of them, together with other valid considerations required by law to be taken into account, at an early stage of decision-making when all options are open, on whether the proposed activity should go ahead at all (the so-called "zero option").[17] This recommendation has special significance if the proposed activity concerns a technology not previously applied in the country and which is considered to be of high risk and/or to have an unknown potential environmental impact. The opportunity for the public to provide input into the decision-making on whether to commence use of such a technology should not be provided only at a stage when there is no realistic possibility not to proceed.[18]*

- *19. Irrespective of how the framework for decision-making is structured, the public should have a possibility to discuss the nature of and need for the proposed activity at all (the zero option, see para.16 above). In order to satisfy the requirements of the Convention and to meet the legitimate expectations of the developer, this possibility should be provided at the*

[16] Article 6, paragraph 4 of the Convention.

[17] Compliance with regard to Lithuania, ECE/MP.PP/2008/5/Add.6, para. 74; Compliance with regard to the European Commission, ECE/MP.PP/2008/5/Add.10, para. 51; Compliance with regard to Slovakia, ECE/MP.PP/2011/11/Add.3, ECE/MP.PP/2011/11/Add.3, para. 61 and 63.

[18] Compliance with regard to Lithuania, ECE/MP.PP/2008/5/Add.6, para 74

earliest stage of the entire decision-making, when it is genuinely still open for the project not to proceed.

- *78(c) Information about the decision-making in the earlier tiers should be available in order for the public to understand the justification of those earlier decisions – including the rejection of the zero option and other alternatives.*

So where is that legal information, such as environmental assessments in accordance with the Kyiv protocol? You only have to look at the other Complaint 181/2013/(RT)AN I have with your office, in relation to the refusal to provide environmental information on these Projects of Common Interest, to realise it is not there. So why do we need these Projects of Common Interest, is it because Commissioner Oettinger and his staff have a 'bee in their bonnet' about turning Ireland into a wind turbine and pylon hedgehog or that there is a defined legally assessed plan or programme related to the environment?

The latter sure doesn't apply and people are getting fed up with what is going on. There is already a Court Case at the European Court of Justice in relation to these Projects of Common Interest[19], there is a Communication ACCC/C/2013/96[20] at the Aarhus Convention Compliance Committee, and as light follows day there will be more legal cases. It is also necessary to point out the legal culpability of your office, which has refused to take action related to the maladministration in these renewable programmes when it has been formally brought to your attention.

1.6 Claims which have no foundation in reality

As George Bernard Shaw the Irish playwright put it; "*the power of accurate observation is called cynicism by those who don't have it*" and although it is not relevant to the legal obligations of plans and programmes related to the environment, one really must comment on the repeated mantra of the EU Commission in relation to "**an extensive consultation process which takes place "en amont" and it is required by EU legislation"**. If we take the adopted PCI list for Ireland[21], it contains the following two huge projects, Element Power and Mainstream Renewables, which have entered into the permitting process in Ireland with An Bord Pleanala[22].

- *Ireland: 1.9.1.: Around 40 individual onshore wind farms, totalling 3GW, collected together through and underground private network in the midlands of Ireland, connected directly to the UK national grid via two 600 kV HVDC sub-sea cables of approximately 500 km and with a capacity of 5 GW in Wales (onshore and offshore).*

- *Ireland: 1.9.4., 1.9.5., 1.9.6.: Energy Bridge (EB) HVDC underground cable of +/- 320kV for the 1st circuit and +/- 500kV for 2 and 3, respectively, and with a*

[19] http://www.justiceandenvironment.org/news/118

[20] http://www.unece.org/environmental-policy/treaties/public-participation/aarhus-convention/envpptfwg/envppcc/envpppubcom/eu-acccc201396.html

[21] http://ec.europa.eu/energy/infrastructure/pci/doc/2013_pci_projects_country.pdf

[22] PC0148: Offaly, Meath, Westmeath, Dublin, Carlow and Wexford / PC0169: in Westmeath, Meath, Kildare, Offaly, Laois, Kilkenny and Tipperary: http://www.pleanala.ie/

total capacity of 5 GW. The length of the 3 circuits will be 290 km, 190 km and 129 km, respectively. The cable will route large amounts of renewable electricity generated in a series of interconnected Irish wind farms directly into the UK market (onshore and offshore).

Indeed it appears that the EU Commission is already actively funding the second company with public money[23]. Article 9 of the EU Regulation 347/2013 on Projects of Common Interest relates to 'Transparency and Public Participation", and requires in paragraph 3:

- *The project promoter shall, within an indicative period of three months of the start of the permit granting process pursuant to Article 10(1)(a), draw up and submit a concept for public participation to the competent authority, following the process outlined in the manual referred to in paragraph 1 and in line with the guidelines set out in Annex VI. The competent authority shall request modifications or approve the concept for public participation within three months; in so doing, the competent authority shall take into consideration any form of public participation and consultation that took place before the start of the permit granting process, to the extent that such public participation and consultation has fulfilled the requirements of this Article.*

Access to information on the environment requests to An Bord Pleanala have proven that the above was never complied with for these two projects. So really it is getting tiring have to read the same old mantras trooped out, when they have no connection with reality, the legal framework or the rights of the citizen.

2. ALLEGATION 1: FAILED TO COMPLY WITH PUBLIC CONSULTATION

2.1 Article 7 of the Convention

This Article applied to the relevant consultation on the Projects of Common Interest and directly engaged Article 6(3) of the Convention:

- *The public participation procedures shall include reasonable time-frames for the different phases, allowing sufficient time for informing the public in accordance with paragraph 2 above and for the public to prepare and participate effectively during the environmental decision-making.*

Please note; a result is specified "*the public to prepare and participate effectively".* Furthermore, Article 6(2) requires that:

- *The public concerned shall be informed, either **by public notice** or individually as appropriate, early in an environmental decision-making procedure, and in **an adequate, timely and effective manner**.*

Given the scale of these massive projects around Europe, in particular in Ireland where the countryside is to be turned into a wind farm and turbine hedgehog, it would only be common sense to take at least some steps to adequately inform the people who lived in that countryside.

[23] http://mainstreamrp.com/mainstream-gets-eu-funding-to-carry-out-2-8-million-seabed-survey-for-energy-bridge-export-project/

So let is review the guidance on elaborating the above legal requirements in the Aarhus Convention, as documented in the UNECE Maastricht Recommendations referred to earlier:

- *158. The public participation procedure should be developed **to suit not only the nature of the plan, programme** or, to the extent appropriate, policy being prepared, but also to **suit the local conditions**. What works well in one area might not work well in another.*

Clearly having a one size fits all for every public participation exercise the Commission runs in complete 'bunk'. This programme had massive effects, which the Commission ignored completely. As the Maastricht Recommendations further elobrate:

- *163. The public participation procedure should be open to allow anyone affected by or with an interest in the decision to participate.*

- *164. However, simply designing the procedure so that anyone who may wish to participate can do so may not be enough. It is recommended that a wide range of interest groups be identified and encouraged to take part in the process. For example, depending on the nature of the plan, programme or, as appropriate, policy, as well as its geographical scope, in addition to members of the public generally, it may be important to invite representatives of, inter alia, some or all of the following groups to participate:*
    - *Community groups;*
    - *Residents' organizations;*
    - *Business and industry organizations;*
    - *Farmers' organizations;*
    - *Religious communities and faith-based groups;*
      (f) Universities and research institutions;
    - *NGOs interested in environmental protection, heritage protection, social welfare, etc.;*
    - *Associations of users (for example associations of users of given waters);*
    - *Tourist and sports organizations.*

- *165. It is also important to involve ordinary members of the public and, as a good practice, actively to encourage all the people and organizations likely to be affected by or having an interest in the decision to take part.*

As to the below, hiding behind hidden notices on websites and issuing decrees by diktat has become the Commission's 'modus operandi', which is why all over Europe people are protesting about the lack of democracy and 'faceless bureaucrats' out of control; which after all is the complete and utter truth. At no stage has an official ever engaged 'face to face', with the public in the Irish countryside on these projects of common interest, despite them being now adopted as regulations, being actively funded, being part of active permitting procedures, etc.

- *167. To the extent feasible, the decision makers and other relevant officials should be personally involved in the public participation procedure. The involvement of officials is usually very important as it allows the public to see that its contribution is valued and taken seriously by the public authority, and at the same time helps the officials to feel more invested in the public participation procedure. However, they should be aware of their own potential*

to influence the process and not abuse their position by putting undue pressure on members of the public wishing to express their opinion, forward viewpoints or concerns or add information.

- *168. The modalities for public participation should be designed to ensure effective public participation in the light of:*
    - *The particular plan, programme or, to the extent appropriate, policy at issue, including its subject matter, geographical application, intended duration, volume and complexity;*
    - *The number and characteristics of the public that it is expected may wish to participate.*

- *169. It is often helpful to use a mixture of methods to help the public gain a deeper understanding of the issues and to participate effectively, bearing in mind that:*
    - *Only if the public to a large extent understands the issues will it be able to see how the proposed plan, programme or policy may affect it in the future and thus to come to an informed opinion regarding what the proposed decision should be;*
    - *Discussion with other members of the public and the public authority's officials may often help the public to gain a deeper understanding of the issues;*
    - *The best results may often be achieved by using interactive methods of participation, for example, public hearings, public discussions, debates or seminars.*

- *170. Whatever modalities for public participation are employed, it should be clear to the public:*
    - *What information is available, where it can be accessed and what its sources are;*
    - *How it can submit comments;*
    - *How the comments will be handled*

None of this happened, the result specified above in Point 170 simply didn't occur and there were reasons for that. Let's be brutally honest here, how many ordinary people can be bothered to read the Commission's "Your Voice in Europe" website page, if they can even find it? How many 'hits' a day does it get or is it as is described 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*", with the power of keen observation:

- *The Commission will avoid consultation processes which could give the impression that "Brussels is only talking to Brussels", as one person put it.*

Up to this point in time it was assumed in Ireland that the Commission was not so mad and out of control, that it was not going to flood valleys with seawater, stick a wind turbine in nearly every farmer's field and plaster the remaining gaps in the countryside with pylons. So on that basis, given an erroneous but valid assumption, that the lunatics were not actually running the asylum, it was not considered normal practice by the good citizens, to actually check and investigate regularly the website of the asylum.

If we go back to what is just obvious in the Maastricht Recommendations in relation to "Methods of notifying the public":

- *63. When designing the methods for notifying the public, the following may be borne in mind:*

- *(a) The methods chosen should be tailored to reach as many of the public concerned as possible, in particular as many as possible of those in the immediate vicinity of the proposed activity or its environmental effects;*

- *(b) As a good practice, the plan for notification of the public should take into account the size and complexity of the project, the cultural context in which the project or activity is located or may affect and the needs of any more vulnerable groups. For most projects, the forms of public notice listed in paragraph 64 should be used, but for complex or controversial projects and activities, the plan for stakeholder engagement may be complex and use a variety of methods of notification, including things like knocking on doors of people who do not have telephones or electricity. The key is that the means of notification should fit the needs of the people identified as the public concerned. In all cases, the public should be told how they will be notified;*

Further clarification is provided below, but it is more related to projects under Article 6 of the Convention, rather than large scale plans and programmes related to the obligations under Article 7.

64. As a guide, public notice should be placed:

(a) In a public place in the immediate vicinity of the proposed activity (e.g., on a prominent fence or signpost on the site of the proposed activity, etc.);

(b) On a publicly accessible physical noticeboard at the public authority competent to take the decision, and on a prominent and publicly accessible part of the competent public authority's website (if such a website exists);

(c) In the newspaper(s) corresponding to the geographical scope of the potential effects of the proposed activity and which reaches the majority of the public who may be affected by or interested in the proposed activity;

(d) In places highly frequented by the public concerned and customarily used for the purpose (e.g., noticeboards in community halls, post offices, shops and commercial centres, places of worship, schools, kindergartens, sports halls and meeting places for marginalized groups, as well as at bus stops, sports fields, etc.);

(e) On the notice boards and websites of all local authorities in the area potentially affected.

As regards the above, did the Commission's much vaunted 'press release' actually get printed in any of the Irish dailies? Did you check this as part of your Ombudsman's investigation or is it considered up to somebody else to do that job of investigation for you? After all the Commission claims it also used "*more traditional alternatives to the internet*", but then it claims a lot of things, which don't happen in reality.

65. Public notice through radio, television and social media (e.g., Facebook, Twitter, blogs), in areas where these are popular forms of communication, may be used to

supplement, but not replace, the above forms of notification. Social media may be particularly useful in some cultures for notifying younger members of the public who may not be reached by more traditional forms of media.

66. If one of the chosen ways of informing the public about its possibilities to participate is via local newspapers, effective notification would be more likely met by choosing the newspaper with the largest circulation in the geographical area concerned, but it would be important to consider on a case-by-case basis how those among the public concerned normally receive their information. For example, it may be that some members of the public concerned may not be able to afford to regularly buy major newspapers. It will also likely be more effective to publish notification in a popular daily local newspaper rather than in a weekly official journal, although additional publication in the official journal would also be important, as in many countries it would still be considered the standard source of such notification.

All of this is blindingly obvious as both common sense and manners. It is also blindingly obvious that none of it got done. As regards the Commission's innuendo that its notices on its website or link to some obscure notice on the website of the Department in Ireland are 'public notices' within the meaning of the Article 6(2) of the Aarhus Convention and Article 9(3) of the Aarhus Regulation 1367 of 2006, then how many hits per day do those relevant links get from the public in Ireland, not to mention the rest of Europe?. Did you investigate this, after all investigation is your duty in the Ombudsman's office? Or maybe one must conclude that you prefer not to investigate such blindingly obvious facts, as you might then have to do something about it, which going on past experience is the last thing you actually demonstrate you want to do.

Just to be clear on the last point in case C-427-07[24] "Commission of the European Communities v Ireland":

- *96. As regards the fifth argument, it must be borne in mind that one of the underlying principles of Directive 2003/35 is to promote access to justice in environmental matters, along the lines of the Århus Convention on access to information, public participation in decision-making and access to justice in environmental matters.*

- *97. In that regard,* ***the obligation to make available to the public practical information*** *on access to administrative and judicial review procedures laid down in the sixth paragraph of Article 10a of Directive 85/337, inserted by Article 3(7) of Directive 2003/35, and in the sixth paragraph of Article 15a of Directive 96/61, inserted by Article 4(4) of Directive 2003/35, amounts to an obligation to obtain a precise result which the Member States must ensure is achieved.*

- *98.* ***In the absence of any specific statutory or regulatory provision concerning information on the rights thus offered to the public, the mere availability, through publications or on the internet****, of rules concerning access to administrative and judicial review procedures and the possibility of access to court decisions* ***cannot be regarded as ensuring, in a sufficiently clear and precise manner, that the public concerned is in a***

[24] http://curia.europa.eu/juris/document/document.jsf;jsessionid=9ea7d2dc30d5693719c11d4549378abbfd2b901e666d.e34KaxiLc3qMb40Rch0SaxuNch50?text=&docid=72488&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=154818

position to be aware of its rights *on access to justice in environmental matters.*

So why didn't you in the Ombudsman's office sort this out already?

2.2 Stakeholder's Meeting in Brussels

One can only wonder that the EU Commission now expects the Irish public, to take time off work and fly over at own expense to attend such meetings in Brussels, and find out what the lunatics in the asylum are actually planning to plaster their countryside with. Of course one should be entirely grateful to such lunatics that "*the participation in the Information Day was free of charge"*. No doubt the Commission is fully convinced that the next edition of the Maastricht Recommendations will reflect these measures as being of worthy of high praise.

2.3 Identifying the Public

One can only comment with wonder on how the EU Commission can generate its own legal framework to suit the occasion:

- *"**Identification of any specific target groups** in Ireland and/or in other EU Member States for the purpose or carrying out the consultation on the PCI Regulation **was not considered necessary**."*

After all as Article 7 of the Convention documents:

- ***The public which may participate shall be identified by the relevant public authority**, taking into account the objectives of this Convention.*

One could also refer to Article 9(2) of the Aarhus Regulation 1367 of 2006:

- ***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.*

It is also necessary to comment on the repeated references to "*minority views in Ireland*", which both you in the Ombudsman's office and the officials in the EU Commission seem to now have an entitlement to using; no doubt related to your worthy endeavours in "*identifying the public affected or likely to be affected*". One might even conclude on the basis of the documentation you sent us, that yourselves and the Commission are not lunatics; as clearly myself and my neighbours in the countryside of Ireland are absolutely thrilled to have such wonderful developments, as pictured overleaf, in the every field next door to us.

After all, they don't make any noise, you can hardly see their 160 to 180 meters in height and there is only going to be several thousand of them; aren't we, as they would be fond of saying in Ireland, 'blessed'. Indeed, the only issue here in respect of yourselves in the EU administration is your degree of ignorance, either ignorance by inherent nature or ignorant, as you don't have the manners and necessary legal compliance to check the facts.

County Westmeath is one of the twenty six counties in Ireland and is located in the midlands area, where the major export wind energy projects, already referred to previously in relation to Element Power and Mainstream Renewables, were to be built. The Draft Westmeath County Development Plan 2014-2020[25] was prepared and made available for public participation from the 1st February 2013 to the 12th April 2013. The Draft Plan was accompanied by a Strategic Environmental Assessment Report and an Appropriate Assessment / Natura Impact Report. A total of 895 submissions were received in relation to the Draft Plan during this period. This must be seen as a very high participation given that the adult population in the county is about 50,000.

These local authority public representatives (County Councillors) then resolved that the Draft Development Plan be amended, voting unanimously to adopt three amendments (P-Win2, P-Win3 and P-Win6). These included a definition of industrial scale wind energy projects and a technical specification for wind farm development; for which a minimum separation distance from residential developments would apply, in the case of larger turbines a separation distance from housing of up to 2 km. As these were considered to constitute a material alteration of the Draft Development

[25] http://www.westmeathcoco.ie/en/ourservices/planning/westmeathcountydevelopmentplanreview/draftcountydevelopmentplan2014-2020/

Plan, public participation on the proposed material alterations occurred between the 18th October and 15th November 2013.

Quite remarkably given the adult population of County Westmeath, 3,500 submissions were received in this public participation and in a similar fashion a County Manager's Report was prepared on the submissions received; summarising the issues raised and outlining the response of the County Manager to them, including recommendations for changes to the Draft Westmeath County Development Plan where appropriate, to address the issues raised[26]. As the County Manager's report summarised:

- *The submissions set out concerns of individuals and organisations across the county and beyond in relation to Industrial Scale Wind Energy development. Most of the submissions express support for the amendments. These submissions in general express sincerely held opinions, concerns and in some instances fears of individuals and communities in relation to the potential for impacts of Industrial Scale Wind Energy Projects on human health and quality of life, environment, heritage, ecology, landscape, visual and recreational amenities. Many submissions refer to the attractiveness of the county as a location of distinctive visual character and high quality environment with considerable potential for development of the tourism sector.*

One could go on, suffice is to say that National Government recently over-ruled the amendments of the locally elected councillors removing the appropriate setbacks above, as they were deemed to restricted the wonderful plans you have in the EU of turning the people's countryside into a wind turbine and pylon hedgehog. The same issue is occurring in neighbouring counties throughout Ireland. So please, in terms of your own personal safety; don't turn up in these locations and start giving the people there lectures about 'minority views'. It is also necessary to point out that despite your abject failures in the EU to ensure that adequate access to justice provisions as required by law are actually in place, local groups right around the countryside are raising huge sums of money, of the order of €50,000[27] per time, to bring these matters of such clear illegalities to the Courts.

Yes when it comes down to it, the people who are forking out these considerable sums of money, their own personal money no less as active stakeholders, would be delighted to have the below said to their face:

- *Finally, the Commission did not consider publishing the PCI Regulation on Facebook and Twitter because all relevant information was published on the "Your voice in Europe" website as well as on "Events" and/or "News; What's new in Energy Policy" webpages of DG Energy* ***that are followed by stakeholders interested in the energy policy****.*

No doubt the professional lobbyists, who are paid to frequent this world above and are rewarded from doing so, are the stakeholders who count.

Finally, before yourselves in the EU get up on your hobby horse that you are saving the planet from some time of environmental catastrophe, one of the longest

[26] http://www.westmeathcoco.ie/en/media/Managers%20Report%20on%20Amendments%20to%20Draft%20CDP%202014-2020.pdf
[27] http://www.agriland.ie/news/laois-locals-raise-e40000-fight-wind-farm-construction/

temperature records which exist is from a sleepy town in rural Ireland called Armagh. So what do we see there? Absolutely and utterly nothing to be concerned about[28], which can be added to the fact that since all this renewable madness was started by the EU Commission in 1998, and that most surely what it is; global temperatures haven't changed a bit[29]. There is only one thing that is certain, either yourselves put a halt to all this madness and associated blatant illegalities or it's going to get very messy as others do it for you, not least through the courts in relation to your blatant illegalities.

3. ALLEGATION 2: LANGUAGE OF CONSULTATION RESTRICTED TO ENGLISH

If we refer back to the Maastricht recommendations in Point 63 on methods for notifying the public:

- *(c) Language issues should be addressed, as appropriate, for example by providing translations if the public concerned do not speak the language of the documentation or by enabling representative organizations to relay the notification to their communities in their own language or a widely recognized regional lingua franca (e.g., English for the EU region, Russian for the countries of Eastern Europe, the Caucasus and Central Asia);*

In the Commission's reply it is stated:

- *The Commission is aware of the importance of providing the public (stakeholders and citizens) with information in their national languages, and it cannot agree with the allegation that it restricted the "language of its website on the public consultation to English only" and thus that it "disenfranchised" many EU citizens. As explained above, the information about public consultation on the PCI Regulation was published on the "Your voice in Europe website" that is the single access point for all public consultations launched by the EC. The information on that website is available in 23 EU languages.*

It's actually blinding simple one can go into the *"Your voice in Europe website"* in German, "Ihre Stimme in Europa[30]". One then goes into the section on "Konsultationen nach Politikbereichen[31]" (consultations according to policy area). One then goes into "Energie[32]" (Energy) and what does one find?

[28] http://badc.nerc.ac.uk/data/armagh/445.pdf
[29] See Fig 1.4 of IPCC AR5 Report: http://www.climatechange2013.org/images/report/WG1AR5_Chapter01_FINAL.pdf
[30] http://ec.europa.eu/yourvoice/index_de.htm

[31] http://ec.europa.eu/yourvoice/consultations/links/index_de.htm

[32] http://ec.europa.eu/energy/consultations/index_de.htm

15.11.2012 - 07.02.2013: Angemessenheit der Erzeugung, Kapazitätsmechanismen und der Binnenmarkt für Strom

14.09.2012 - 07.12.2012: Durchführung eines Daten- und Transaktionsmelderahmens für Energiegroßhandelsmärkte

21/06/2012 - 04/10/2012: List of projects submitted to be considered as potential Projects of Common Interest in energy infrastructure

21/06/2012 - 05/09/2012: Intelligent Energy – Europe III in Horizon 2020

23/05/2012 - 07/06/2012: Request for information about non TYNDP projects for identification as potential Projects of Common Interest (PCI)

One can see the detail oneself in Attachment 1 to this document, seems to be a lot in there going on in the English language rather than in the German language? Indeed when one clicks on the all-important consultation "List of Projects to be submitted as potential Projects of Common Interest in energy infrastructure" what does one get[33]? Well this is shown in Attachment 2, but basically it is:

- *"Die gesuchten Informationen stehen in folgender Sprache/folgenden Sprachen zur Verfügung: English"* (the sought after information is available in the following language / languages: English).

Let's get real here, the front of this document you sent me is signed personally by Commissioner Oettinger, the Energy Commissioner behind what can only be described as completely mad capped schemes and blatant illegalities. I don't have to call him a liar as some form of political insult, but if I was to present this documentation to a judge for consideration, that is the single immediate conclusion. There are after all in Germany and Austria alone nearly 100 million citizens who speak the most common native tongue in the European Union, i.e. German.

- Do they all speak English fluently?
- Was there a legal obligation to communication this programme of enormous Projects of Common Interest with them?
- Is there an on-going legal action in the European Court in relation to the failure to conduct public participation on these Projects of Common Interest occurring in this area?

The answer to the first is clearly no. The answer to the second is clearly yes. The answer to the third is also yes[34].

4. ARTICLE 9 OF THE AARHUS CONVENTION ON ACCESS TO JUSTICE

It can only be stated as embarrassing, as to how ridiculously out of control the EU Commission has become with the binding legal framework in which it is required to operate. The "Aarhus Convention: An Implementation Guide" second edition clarifies

[33] http://ec.europa.eu/energy/infrastructure/consultations/20120620_infrastructure_plan_de.htm

[34] http://www.justiceandenvironment.org/news/114 and http://www.justiceandenvironment.org/_files/file/2013/PCI%20Czech%20Republic.pdf

the rights enshrined in the Convention in relation to access to justice in plain layman's language:

The provisions on access to justice essentially apply to all matters of environmental law, but a distinction is made in the Convention between three categories of decisions, acts and omissions:

- *Refusals and inadequate handling by public authorities of requests for environmental information*

- *Decisions, acts and omissions by public authorities concerning permits, permit procedures and decision-making for specific activities*

- *All other kinds of acts and omissions by private persons and public authorities that may have contravened national law relating to the environment*

Depending on the kind of decision, act or omission in question, the Convention sets different criteria and allows different degrees of flexibility for the Parties in providing access to justice. Despite these differences, however, it is important to recall that the various references in the Convention to national law, national legislation and criteria in national law do not imply leeway for the Parties to deviate from the objective of granting wide access to justice within the scope of the Convention. Rather, these references recognize that Parties may achieve this objective in different ways in accordance with their national legal frameworks.

Whereas for the first two of the three categories listed above, the Parties must provide review procedure before a court or court-like body established by law, for the third category the Parties may ensure access to justice either by administrative or judicial procedures. The term "judicial procedures" may be seen as another way to describe courts and court-like bodies. A general characteristic of courts and court-like bodies is that they act independently and impartially outside the administration, i.e., without any instruction from the executive bodies on how to decide a specific case. While making the distinction between judicial and administrative procedures, certain general requirements are imposed on all reviewing instances and procedures within the scope of the Convention. First, they must be fair, equitable, timely and not prohibitively expensive. Second, they must provide adequate and effective remedies. Third, information on administrative and judicial review procedures must be disseminated to the public, and the Parties are encouraged to establish appropriate assistance mechanisms to remove or reduce financial and other barriers.

It was already highlighted in Complaint 0181/2013(RT)AN, how the European Platform Against Wind Farms (EPAW), an environmental organisation I fully support, in case T-168/13[35] was denied access to the European General Court in matters related to the Aarhus Convention. This was despite it being already established in the Irish High Court and Supreme Court in the Sandymount Residents case that *"an unincorporated association with no legal personality*[36]" had rights to access to justice proceedings in environmental matters. However, the General Court, on application no less from the Commission, ruled in a completely contrary manner.

[35] http://curia.europa.eu/juris/liste.jsf?language=en&jur=C,T,F&num=T-168/13&td=ALL

[36] http://www.courts.ie/Judgments.nsf/bce24a8184816f1580256ef30048ca50/e57d6ca0f350359280257c31004816ef?OpenDocument

So do I or other citizens have access to the European General Court to deal with the illegalities raised here? Clearly not and when EPAW on our behalf requested an Internal Review of the Projects of Common Interest, the Commission firmly slammed shut the door in their face[37]. Indeed as Communication ACCC/C/2008/32[38] has established, the door in relation to access to the European Court on environmental issues is firmly slammed shut and the EU Commission and European Parliament are actively pursuing appeals in the European Court to keep it that way[39].

So where are we going to from here? As European and Irish citizens, we have defined rights under the Aarhus Convention in all three pillars of Access to Information, Public Participation and Access to Justice in Environmental Matters; rights, which in practice have all been denied to us. Furthermore, under Article 41 of the Charter of Fundamental Rights of the Lisbon Treaty[40] we have the:

Right to good administration

1. Every person has the right to have his or her affairs handled impartially, fairly and within a reasonable time by the institutions, bodies, offices and agencies of the Union.

2. This right includes:

(a) the right of every person to be heard, before any individual measure which would affect him or her adversely is taken;

(c) the obligation of the administration to give reasons for its decisions.

However, it is extremely easy to document that, as regards these so wonderful Projects of Common Interest, none of the above is actually happening. We could move on to Article 47 of the same Charter of Fundamental Rights:

Right to an effective remedy and to a fair trial

Everyone whose rights and freedoms guaranteed by the law of the Union are violated has the right to an effective remedy before a tribunal in compliance with the conditions laid down in this Article.

Everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal previously established by law. Everyone shall have the possibility of being advised, defended and represented.

Legal aid shall be made available to those who lack sufficient resources in so far as such aid is necessary to ensure effective access to justice.

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[37] http://ec.europa.eu/environment/aarhus/pdf/requests/20/reply.pdf

[38] http://www.unece.org/env/pp/compliance/Compliancecommittee/32TableEC.html

[39] See article on "Commission decision to appeal two decisions of the General Court applying the Aarhus Convention": http://www.clientearth.org/aarhus-centre/news/european-union-aarhus-centre-news-october-2012-2028

[40] http://register.consilium.europa.eu/doc/srv?l=EN&f=ST%206655%202008%20REV%207

Not much of a remedy available to us in practice; raising €50,000 at time to get through the doors of the Irish High Court is after all only the start of it; isn't it.

It may be news to you people in the EU Administration, but elections are only a 'roll call' to select public representatives and not put 'rulers' into place with unlimited powers by diktat. The environment of Ireland does not belong to administrators of the Irish State or the administrators of the EU to do what they want with it, such as plastering it with sea water filled valleys, wind turbines and pylons. Instead, the environment of Ireland belongs to its people and they have defined rights in law, which must be respected. History teaches us that populist trends and fashions come and go, as a result that is why a defined legal structure and associated rights have been put in place. This legal structure and associated rights are there for a reason, as part of the necessary checks and balances.

For instance, the EU Commission's Y2K press release of 4th January 2000 can only be described in today's terms as completely stupid[41]. Four days after the 'biggest bug in history' they still couldn't admit that they had been duped; "*A cumulative effect may appear in the weeks or months to come, as a large number of small glitches builds up in systems that are increasingly inter-connected".* One can also point out the 'hype' over 'swine flu' was such an embarrassing mess that the European Parliament had to issue a formal report on "*Swine flu: Learning from past mistakes*"[42].

According to the EU Commission's lengthy document of 2003 *"The proliferation of weapons of mass destruction and their means of delivery are a growing threat[43]"*. In reality nothing happened with such "mass destruction" since then. Then the EU's mad rush into biofuels was such a disaster that we now have reached the situation where it has to be capped[44]. As Oxfam are quite rightly putting it, such biofuels are a "*brazen assault on common sense. In a starving world, phasing out the use of food for fuel is the only sensible thing to do*". We can even read about the wonderful predictions of 2003 and as to how skiing in the Alps would only be the preserve of the rich, who could afford the expensive high altitude resorts[45]. Pretty good skiing in the last few years, even lowly Scotland has been open for business from late November to the start of May.

In Ireland Jonathan Swift wrote his famous Gulliver's Travels nearly 300 years ago, and he mocked scientists that "*spend their time extracting sunlight from cucumbers and other nonsense.*" The history books describe to us also governments / rulers, who enamoured by their own eloquence and charmed by their own intellectual gyrations, fail to see that some of their concepts are barking mad. Yet the wheels slowly turn, even of populist movements; people now question the unquestionable

[41] http://europa.eu/rapid/press-release_IP-00-1_en.htm

[42] http://www.europarl.europa.eu/news/en/news-room/content/20110308IPR15032/html/Swine-flu-learning-from-past-mistakes

[43] http://register.consilium.europa.eu/doc/srv?l=EN&f=ST%2015708%202003%20INIT

[44] http://www.euractiv.com/sections/sustainable-dev/biofuels-debate-continues-despite-eu-agreement-302834

[45] http://news.bbc.co.uk/2/hi/europe/3257022.stm

"consensus of scientist and evidence from computer models[46]". Why because the slightest bit of evaluation reveals that the first doesn't exist, not that it would even be determining if it did, while the second is just a profoundly stupid statement.

So where do we go from here? Since there are no access to justice procedures available to the European Court, if your office of the Ombudsman doesn't provide 'effective remedies', as is required by the Aarhus Convention then once again the EU is in breach of its obligations under National and Community law. As the Aarhus Convention: An Implementation Guide puts it "*the ombudsman must be able to provide effective remedies, including injunctive relief, as appropriate*". In addition to that there are obligations related to 'timely'. So far when these matters of illegalities related to the public participation on the Projects of Common Interest were raised with you on 22nd January 2013, which became Complaint 0181-2013-JF, you refused on the 14th February 2013 to deal with the matters of public participation, and you still haven't dealt to date with the legal failings related to access to information.

So we had to start all over again with the issues of public participation in a new complaint on 21st July 2013 relating once again to public participation. So where have we got since a year later on this second complaint 240/2014/SID? Outside of yourselves writing a single letter to the EU Commission stating what can be summarised as the 'bleeding obvious' exactly nowhere. To that one can also add, as highlighted already, that when the illegalities associated with the Irish National Renewable Energy Action Plan (NREAP), and the ruling in connection to the same from UNECE, were brought to your attention you refused to do anything about it; somebody else's problem. So you either put a binding ruling in place stopping this programme of Projects of Common Interest, until it complies with the legal framework of which it is completely in breach or you either clear off, as you have demonstrated to date of being nothing but; (a) a completely expensive waster of people's time and; (b) of having no regard for the citizen's rights under International and Community law to access to justice.

[46] http://www.cityam.com/1405359599/don-t-silence-lord-lawson-we-can-t-leave-climate-change-policy-scientists?utm_campaign=CMU+-+15-+07-+14+-+unsponsored&utm_source=emailCampaign&utm_medium=email&utm_content=