



## **European Platform Against Windfarms (EPAW)**

### **Statement to Aarhus Convention MOP-6 on Preparatory Segment Finalisation of Pending Documents**

**We request the opportunity to make a brief intervention at the finalisation of the following documents:**

- **Draft decision VI/8 on general issues of compliance, ECE/MP.PP/2017/19**
- **Draft decision VI/8f concerning compliance by the European Union with its obligations under the Convention, ECE/MP.PP/2017/25**

Honorary representatives of the Parties to the Aarhus Convention, thank you for the opportunity to make this short submission today:

#### **Background:**

EPAW represents nearly 1,300 member organisations from 31 European countries, who question the unacceptable impacts and lack of effectiveness of wind farms. The findings and recommendations on ACCC/C/2010/54 led to Decision V/9g of non-compliance by the European Union. Namely, that the provisions of Article 7 of the Convention were bypassed in the adoption of the National Renewable Energy Action Plans (NREAPs) for the 20% by 2020 renewable energy Directive<sup>1</sup>.

'Sooner or later everyone sits down to a banquet of consequences'. More than a thousand billion Euros has now been invested in the EU in wind farm and solar infrastructure. No environmental information was ever available, as to what these NREAPs were to actually deliver, while the public were denied their lawful opportunity to participate in their decision making.

What carbon savings now achieved, could easily have been done so, for less than 5% of that cost. While the weather continues to be just the weather, it does not interfere with people pursuing their lives, as was the case in the past, and with each passing year, it is clearer as to how widely speculative those claims of an impending environmental catastrophe are.

If the EU and its Member States had followed the legal framework of the Convention to promote democracy and the rule of law in environmental matters, we would not now be in this mess, with the landscape and natural heritage scarred, billions

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<sup>1</sup> Directive 2009/28/EC:  
<http://eur-lex.europa.eu/legal-content/EN/ALL/?uri=celex%3A32009L0028>

squandered, citizens angry and disillusioned, and ever increasing claims of adverse health impacts.

EPAW continues to be active in two ongoing Communications ACCC/C/2013/96 (European Union) and ACCC/C/2014/112 (Ireland), both of which are close to finalisation.

### **Draft Decision VI/8 on General Issues of Compliance**

The draft Decision VI/8 is very welcome, as the findings and recommendations on compliance in the period 2014–2017 build on the Maastricht Recommendations, the second edition of the Aarhus Convention Implementation Guide and previously endorsed findings and recommendations of the Compliance Committee. Despite such clarity on the obligations inherent to the Convention, it is disturbing to see how so many Parties within the EU continue to politically bully through renewable projects, in direct contravention to the provisions of the Convention.

In particular, the obligations inherent to multi-tier decision-making are once again articulated in these recent findings, in that:

- *If a particular tier of the decision-making process has no public participation, then the next stage that does have public participation should provide the opportunity for the public to also participate on the options decided at that earlier tier.<sup>2</sup>*

The EU and its Member States clearly see themselves to date, as exempt from these provisions. This can be seen in the manner in which they have pursued the implementation of the NREAPs and the related Projects of Common Interest, the latter being the particular subject matter of Communication C/96. As Communication C/112 also demonstrates, they have turned the whole concept of public participation on downstream renewable project approvals into a meaningless pro forma exercise, in which options are no longer open and the public participation is a complete sham. Diktat instead prevails, as the only criterion is to meet a mandatory target and plan previously decided without input from the public.

### **Draft Decision VI/8f Concerning Compliance by the European Union**

It took less than a year for the EU and its Member States to develop and legally adopt the NREAPs for this simply enormous renewable investment. Yet year after year, the representatives of the EU Commission persistently obfuscated and deliberately time wasted with regard to compliance with Decision V/9g. Bizarrely, despite being provided with a period of more than two years by the Compliance Committee, they were unable to write to and obtain from the same Member States, details as to how the public participation provisions of Article 7 were addressed in the adoption of these NREAPs. They also choose to simply ignore to provide a response to the Committee's written questions related to the same, but were well able to write to members of the public in Ireland, formally denying that any such non-compliance had occurred in the first place.

The second part of draft Decision VI/8f in relation to access to the European Court of Justice is particularly welcome and highly important. As the Communicant in C/54

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<sup>2</sup> ECE/MP.PP/C.1/2017/3 (Czechia)

can testify, initiating a judicial review of the NREAP in the Irish High Court, in relation to the breach of Aarhus rights, was a farce extending over three years and nine months before any written judgement was obtained.<sup>3</sup> The first judge walked off the job after several days of the hearing, the second took nearly a year and a half to write his judgement, in that he didn't have to decide. As the State's senior consul, an ex-attorney general repeatedly summed it up: *"If the State so chooses to breach its international treaty obligations, then the citizen can complain about it, but that is all the citizen can do"*.

The reaction of the EU Commission in its proposal of 29 June 2017 for a Council Decision<sup>4</sup> to reject the findings on communication ACCC/C/2008/32 (Part II) is typical of the anti-democratic position and contempt for the rule of law that this institution has. It is not surprising that there is a growing chorus of discontent around the EU at the lack of democratic structures, which has already greatly contributed to the population of one Member State choosing to leave.

In relation to the Council Decision (EU) 2017/1346 of 17 July 2017 on the position to be adopted, on behalf of the European Union, as regards compliance case ACCC/C/2008/32<sup>5</sup>, EPAW would like to point out that the EU has a consistent track record of failing *"to take note"* of the provisions of the Convention and the resulting compliance proceedings. Therefore, these findings should be endorsed, while as Compliance Committee has clarified in its Open Statement of the 30<sup>th</sup> June 2017:<sup>6</sup>

- *"A party may not invoke the provisions of its internal law as justification for its failure to perform a treaty. ..."*

Finally, we thank you for the opportunity to make this brief statement on behalf of EPAW.

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<sup>3</sup> Swords -v- Minister for Communications, Energy and Natural Resources & ors [2016] IEHC 503:

<http://www.courts.ie/Judgments.nsf/0/4B8AEDC42AE79B298025801B003E70D6>

<sup>4</sup> <https://ec.europa.eu/transparency/regdoc/rep/1/2017/EN/COM-2017-366-F1-EN-MAIN-PART-1.PDF>

<sup>5</sup> [https://www.unece.org/fileadmin/DAM/env/pp/mop6/Statements\\_and\\_Comments/Council\\_Decision\\_EU\\_2017\\_1346.pdf](https://www.unece.org/fileadmin/DAM/env/pp/mop6/Statements_and_Comments/Council_Decision_EU_2017_1346.pdf)

<sup>6</sup> [https://www.unece.org/fileadmin/DAM/env/pp/compliance/CC-57/ACCC\\_statement\\_on\\_Commission\\_proposal\\_on\\_C32\\_30.06.2017.pdf](https://www.unece.org/fileadmin/DAM/env/pp/compliance/CC-57/ACCC_statement_on_Commission_proposal_on_C32_30.06.2017.pdf)