

From: Christine [mailto:luanam@btinternet.com]
Sent: 24 January 2012 16:29
To: 'ENER-RES-STRATEGY@ec.europa.eu'
Cc: 'ENER-ACCES-DOCUMENTS@ec.europa.eu'
Subject: Request for Information under Regulation 1367/2006.
Importance: High

To: ENER-RES-STRATEGY@ec.europa.eu
Cc: ENER-ACCES-DOCUMENTS@ec.europa.eu

To: The European Commission

From: Mrs. V.C.K. Metcalfe,

Taigh a Luana, Loch Avich, Taynuilt, Argyll, PA35 1HJ.Scotland.UK.

Date: 24th. January 2012

Request for information under Regulation 1367/2006

Dear Sir/Madam,

Re: Public Consultation on the EU's Renewable Energy Strategy

http://ec.europa.eu/energy/renewables/consultations/20120207_renewable_energy_strategy_en.htm

In respect of the above consultation, there are important departures relating to the compliance of this consultation with the Aarhus Convention.

In Article 7 of the Convention it is made very clear that in relation to public participation concerning plans, programmes and policies relating to the environment :

"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. To the extent appropriate, each Party shall endeavour to provide opportunities for public participation in the preparation of policies relating to the environment"

Regulation 1367/2006 (<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2006:264:0013:0013:EN:PDF>) applies the provisions of the Aarhus Convention to the Community institutions and bodies there is a requirement that:

"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".

With regard to the previous 2007 EU Commission's "Renewable Energy Road Map: Renewable energies in the 21st century; building a more sustainable future"^[1], the first section on the consultation reads like the results of an opinion poll, there was no technical analysis.

"Two thirds of respondents considered renewable energies the best option to ensure that all Europeans enjoy access to energy at reasonable prices".

The reality is that electricity prices in those Member States which have had ambitious renewable energy programmes, such as Denmark, Germany and Spain – are escalating to

unsustainable levels. The statement above therefore deserves closer scrutiny as many will clearly not have agreed with such a statement. Where is the proof that where technical evidence was submitted to support any dissenting representations made, this evidence was properly considered?

The "Aarhus Convention: An Implementation Guide" (<http://www.unece.org/fileadmin/DAM/env/pp/acig.pdf>) is particularly clear on page 109 with regard to "taking account of the public participation in the decision".

Regarding public participation in decision-making, members of the public have no veto rights, but the authorities must, *to an objectively high standard*, show that public comments have been seriously considered, i.e. they should be able to show why a particular comment was rejected on substantive grounds. Indeed in appropriate circumstances a member of the public, whose comments were not duly taken into account, *should be able to challenge the final decision in an administrative or judicial proceeding*. There are still cases where this is proving impossible for those with little or no funding to attempt such a route for challenges.

Our request for information under Regulation 1367/2006 therefore relates to the conduct of this consultation and:

(a) The procedures which will be employed with regard to "taking account of the public participation in the decision".

(b) The provisions for Access to Justice.

With regard to point (b) we are highlighting Article 11 of Regulation 1367/2006, which is not in compliance with the Aarhus Convention and its provisions for Access to Justice, which relate to the public concerned. In addition we are highlighting the recent findings and recommendations of the UNECE Aarhus Convention Compliance Committee in Communication ACCC/C/2008/32, which recommended "that all relevant EU institutions within their competences take the steps to overcome the shortcomings reflected in the jurisprudence of the EU Courts in providing the public concerned with access to justice in environmental matters", see below:

<http://www.unece.org/fileadmin/DAM/env/pp/compliance/C2008-32/DRF/C32Findings27April2011.pdf>

[1] http://ec.europa.eu/energy/energy_policy/doc/05_renewable_energy_roadmap_full_impact_assessment_en.pdf

An acknowledgement of receipt of this representation would be much appreciated.

Yours sincerely,

Mrs. V.C.K. Metcalfe. Community Councillor. Avich & Kilchrenan Community Council.