

To: P. Nikiforos Diamandouros. European Ombudsman.

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

Date: 24th.June. 2012

Re. Complaint 813/2012/KM

Attached: Letter of the 7th June [Ares674664_Complaint_ 10522012KM_Metcalfe_email.pdf]

Dear Mr. Diamandouros,

Thank you for your email of the 24th.May 2012, in which you asked for further clarification regarding complaint 813/2012/KM.

The reasons why DG Environment's Env.A.2's response can be judged to be unreasonable or invalid are as follows:-

1. The position of Jean-Francois Brakeland on the 22nd March 2012 in closing the file on CHAP (2010) 02125 was that "there is nothing in the judgement (*C-50/09*) that would oblige the competent authorities to produce their own environmental assessment study".
2. With regard to the case law in *C-50/09*¹, it is necessary to highlight Points 36 to 40 of the findings of the Court. Clearly the competent authority is required to prepare a specific assessment, which is "distinct from the obligations laid down in Articles 4 to 7, 10 and 11 of Directive 85/337".
3. Directive 2011/92 (ex 85/337) does not impose the publication of this environmental impact assessment; this the Court confirmed in case *C-332/04*. However, the Court did not discuss the provisions on access to information on the environment (Directive 2003/4). It is important to point out the relevance of Article 9 of Directive 2011/92 (ex 85/337) in which the public has to be provided "with the main reasons and considerations on which the decision is based, including the public participation process". This is in order to facilitate the Access to Justice Pillar of the Aarhus Convention as prescribed in Article 11 of Directive 2011/92 (ex 85/337).
4. The environmental impact assessment conducted by the competent authority in accordance with Article 3 of Directive 2011/92 (ex 85/337) is environmental information. As such, a citizen is entitled to access on request, as per the Rights specified in the Directive 2003/4 as part of the implementation of the Access to Information on the Environment Pillar of the Aarhus Convention.
5. Furthermore in case *C-75/08*² the Court decided that on request, the administration must make available to the public the information under Article 4 of Directive 2011/92 (ex

¹ <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:62009CJ0050:EN:HTML>

² <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:62008J0075:EN:HTML>

85/337) in relation to why an Annex II project was not considered subject to an Environmental Impact Assessment procedure. In particular it is necessary to highlight Points 55 to 61 of the judgement of the Court.

6. Clearly with regard to Article 3 of Directive 2011/92 (ex 85/337), the same principles should apply, as the citizen “must have the possibility of deciding, with full knowledge of the relevant facts, whether there is any point in applying to the courts”.
7. In relation to CHAP (2010) 02125 there should have been an environmental assessment done by the Competent Authority i.e. Forestry Commission (Scotland), which was independent of the developer’s documentation. Without this, it was and is impossible to gauge the accuracy or otherwise of the developer’s assessment and the environmental considerations on which the decision to grant was made. There is no record of this being produced despite our repeated requests for the same. The key issue therefore is that Mr. Brakeland was fully informed that these documentation requests had come to nought and saw fit to dismiss it, in the process ignoring the C-50/09 judgement.

With regard to Good Practice (GP) Wind and the failure “to maintain an open, transparent and regular dialogue with civil society”, this relates in particular to a continued failure to reply to requests for information in relation to the transparency of the environmental information presented by the GP Wind programme. In particular in relation to the emissions and fuel savings attributed to this wind energy technology, for which there is now some 100,000 MW, representing in the order of 50,000 turbines, installed in the EU-27 to comply with the Commission’s objectives.

8. I would like to draw your attention to the on-going Scottish parliamentary Inquiry into the renewables programme, in particular the short submission in the link below. Note: The Professional Engineering Institutions; Institution of Mechanical Engineers (IMechE), Institution of Civil Engineers (ICE), Institution of Engineering and Technology (IET) and the Institution of Engineers and Shipbuilders in Scotland (IESIS) combined to make a joint presentation:
http://www.scottish.parliament.uk/S4_EconomyEnergyandTourismCommittee/General%20Documents/INSTITUTION_OF_ENGINEERING_AND_TECHNOLOGY.pdf
9. As the Institution of Engineers and Shipbuilders in Scotland (IESIS) point out³: “While wind power generators do not emit carbon at source, from a system viewpoint, wind power normally causes CO₂ emissions. Gas and coal stations are used to balance the grid to cope with the intermittent supply from wind power. In this mode their efficiency is reduced and therefore they use more energy and produce more CO₂ than in normal generation mode”.
10. This is an indisputable fact. Yet all the information from the EU Commission ignores this fact, which is highly important, given that these assumed fossil fuel and emission savings are

³ <http://www.iesisenergy.org/wind-technical.html>

essentially the sole justification for this massive roll out of wind energy with all its associated financial and environmental impacts⁴.

11. If we consider GP Wind, the original information request to Mr Gillett related to the “Good Practice Wind; Thematic Case Study Drafts” published 26th August 2011 which on page 29 in relation to estimating carbon emission savings from wind farms, no allowance was made in relation to balancing plant and the inefficiencies induced there.
12. In this regard I pointed out Article 5 of Regulation 1367/2006, which implements Article 5 (2) of the Aarhus Convention in relation to the transparency of environmental information.
13. With regard to the responses from Mr. Gillett of EACI, I now have had a further response from him which is provided in the attached letter [Ares674664_Complaint_0522012KM_Metcalf_email.pdf] and the two e-mails copied below in the Appendices. In it you will see that there is no documentation available in relation to how the transparency of the GP Wind project is assured. Reasons given for this are irrelevant, as more than enough time has passed for such requirements to be fulfilled and the website has been active in its dissemination role for in the order of a year. In addition Mr. Gillett now admits (Appendix 2) that the Interim project outputs were not examined in relation to the results being “accurate, up to date and comparable”. Such an admission demonstrates that it is therefore impossible for the EACI to claim that its responsibilities are being carried out, as it claimed in the attached letter of 7th June.
14. Article 5 (1) of Regulation 1367/2006 is very specific: “Community institutions and bodies shall, insofar as is within their power, ensure that any information that is compiled by them, or on their behalf, is up-to-date, accurate and comparable”. One simply cannot reconcile this with the position of Mr. Gillett in his letter of the 7th June that “it should be borne in mind that the beneficiaries bear sole responsibility for the information contained in the deliverables provided for the GP Wind Project. The purpose of the project is to highlight and disseminate good practice in reconciling onshore and offshore wind with environmental objectives, and to publish the conclusions on the GP Wind website.”

Conclusions.

15. There is growing concern and dismay among the population of Scotland, not to mention other parts of the UK and indeed other Member States, in the manner in which enormous developments in the area of wind energy are being fostered among communities in rural areas, more and more frequently in a manner which is against their will. It is clearly obvious that two systems of law are now being applied; (1) in relation to conventional programmes

⁴ See for instance the position of the Institution of Mechanical Engineers on the Scottish Renewable Energy Programme: <http://www.imeche.org/scottish-energy-2020>

and projects, which have to proceed with care under the fullest of scrutiny and transparency and (2) in relation to renewable energy projects to fulfil the objectives of the EU's own targets, in which the legal framework is being subverted to rush through an ever increasing number of these developments.

16. In relation to the Aarhus Convention, which is fully binding on the Institutions of the EU, there is an obligation to ensure that the public is properly informed in relation to information on the environment in order that they can participate effectively in the decision making process. There is also an obligation to ensure that public is provided with opportunities to participate in the decision-making process in a fair and transparent manner and to ensure that the objectives of the Convention are properly enforced. Furthermore, as previously indicated there are obligations under the Lisbon Treaty "to maintain an open, transparent and regular dialogue with civil society". Clearly the above demonstrates that maladministration is occurring, the public's right to be informed properly in relation to the decision making process, as specified in the relevant legislation, is to be ignored, as is the public's right to be properly informed about the alleged benefits of this wind energy programme.

Yours sincerely,

Mrs. V.C.K. Metcalfe.

Appendix 1

From: Christine Metcalfe [mailto:luanam@btinternet.com]

Sent: 09 June 2012 17:54

To: 'William.Gillett@ec.europa.eu'

Subject: Re. your Ref.Ares(2012)674664 - 07/06/2012

Importance: High

Dear Mr. Gillett,

I am in receipt of your letter of the 7th.June for which I thank you. It is unfortunate that our dialogue was closed by you before remaining questions had been answered. The response made to your last letter mentioning closure included enquiries.

I think it would be helpful for the clarification and subsequent full understanding of remaining questions, if I now make a formal request under Regulation 1367/2006 for the documentation

produced by the EACI officers in relation to GP Wind and its compliance with the requirements to be accurate, up to date and comparable. In particular the draft manual they produced on Good Practice Wind.

Yours sincerely,

Mrs. V.C.K. Metcalfe.

Appendix 2

From: "William.Gillett@ec.europa.eu" <William.Gillett@ec.europa.eu>

To: luanam@btinternet.com

Sent: Monday, 11 June 2012, 18:13

Subject: Ref.Ares(2012)674664 - 07/06/2012 and your 2 e-mails of 9 June 2012

Dear Mrs Metcalfe

Thank you for your two e-mails in response to my letter of 7 June.

Concerning your specific request for documentation produced by the EACI on the Good Practice Wind guide, which is an official deliverable of the GPWIND project, I can confirm that no documentation has yet been prepared by the EACI on this deliverable, for the good reason that it has not yet been formally submitted for assessment by the beneficiary. We are aware that the latest draft materials which will form this guide are already available on the project website <http://www.project-gpwind.eu/>, which is fully in line with our advice to IEE project beneficiaries to put their work into the public domain as soon as they feel that it is appropriate, so that other stakeholders across the EU can benefit from and eventually even contribute to such work. However, work on this document was scheduled for the first half of 2012, so it was not available for assessment when the Interim Report was submitted to the EACI for assessment in autumn 2011, and the final report is not due to be submitted for assessment until the end of 2012. The EACI makes assessments only after the receipt of Interim and Final project reports for the approval or rejection of the reports and payment of the balance in accordance with the grant agreement.

Yours sincerely

Mr William GILLETT

Head of Unit for Renewable Energy

European Commission

Executive Agency for Competitiveness and Innovation (EACI)

COV2 10 / 056

B-1049 Brussels/Belgium

Tel +32 (0)2 299 5676 : Fax +32 (0) 2 298 6016

william.gillett@ec.europa.eu

<http://ec.europa.eu/eaci>

http://ec.europa.eu/energy/intelligent/index_en.html