

# Communication to the Aarhus Convention Compliance Committee

## **I. Information on correspondent submitting the communication**

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## **II. Party concerned**

Republic of Ireland

## **III. Length of the communication**

This Amicus Brief is 14 pages long and this includes the supporting attachments contained within.

## **IV. Facts of the communication**

This is an Amicus brief in support of complaint **ACCC/C/2014/112 Ireland**.

This Amicus brief aims to demonstrate:

- A. The lack of transparency / access to information regarding activities and measures likely to affect elements of the environment. (breaching Article 4.1)
- B. That access to justice is not equitable - this is based on far greater access to information and training available to developers and public sector employees than to the public (breaching Articles 3.1, 3.3, 9.4 and 9.5)

**A. Lack of transparency / access to information regarding activities and measures likely to affect elements of the environment.**

County Laois, like most other rural counties in Ireland is under significant development pressure from industrial windfarms and the associated grid infrastructure. In Laois, this includes state owned windfarm developers such as Coillte and Bord na Mona and major private developers such as Element Power who have partnered with Coillte for access to their lands.

On 15<sup>th</sup> March 2016, a group of Laois citizens due to be directly affected by these developments sent a request for Environmental Information to the Local Authority (Laois County Council) asking for information regarding wind developments in the context of the County Development Plan. (This request was submitted under the Access to Information on the Environment Regulations 2007-2014<sup>1</sup> which implements the access to information pillar of the Aarhus convention in Ireland).

The full scope of questions posed and the response given can be seen in the decision from the Local Authority dated 28<sup>th</sup> April 2016 – Annex 1.

In particular I draw your attention to information requests no's 3 and 4:

*"3. A list of all meetings held between wind developers and Laois County Council / Laois Planning Department from January 2008 – current date to include the dates of those meetings, the attendees, the minutes and all documents, including subsequent correspondences, arising from those meetings. Wind developers should be taken to include state bodies such as Coillte, Bord na Mona etc. as well as any others seeking to have land zoned as suitable for wind energy development or seeking to develop wind energy installations.*

*4. All correspondence between Element Power and Laois County Council / Planning Department in the time period from 01 January 2008 - present date to include all meetings, the dates of those meetings, the attendees, the minutes and all documents, including subsequent correspondences, arising from those meetings."*

It is considered that the only reason for wind developers to meet with either the County Council or the Planning Department of the Council would be to progress plans for development of a wind installation or to set a favourable framework for wind development within the county. In either case, an environmental impact assessment process would apply within which the public have a right to participate (at the very minimum an environmental impact screening would be required). Thus, this should fall well within the boundaries of environmental information as defined under Article 2, 3 (b) of the Aarhus convention.

Notably, page 54 of the Aarhus implementation guide explains that there is a presumption in favour of disclosure particularly for environmental information falling under Article 2, paragraph 3 (b).

The Council responded to these questions on 28<sup>th</sup> April as follows (see Annex 1 for full response):

*"With regard to Part 3 of your request, I wish to advise you that access to the following records is refused pursuant to Article 9(1)(c) of the AIE Regulations:*

- *Records number 3.1 to 3.12 (12 records)*

*Please that pre-planning meetings were held on 11<sup>th</sup> July, 2013 (Planning Reference 13/268) and on 23<sup>rd</sup> July, 2009 (Planning Reference 10/129) and copies of these are available for inspection on the planning files. In accordance with Article 7(3) of the AIE Regulations, I wish to advise you that I am granting access to these records which are available for public viewing at our Planning Counter of Laois County Council, between the hours of 9.30 am to 4.00 pm, Monday to Friday*

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<sup>1</sup> <http://www.environ.ie/sites/default/files/migrated-files/en/Legislation/Environment/Miscellaneous/FileDownload%2C30002%2Cen.pdf>

With regard to Part 4 of your request, I wish to advise you that access to the following records is refused pursuant to Article 9(1)(c) of the AIE Regulations:

- Records number 4.1 and 4.2 (2 records)”

This refusal was based on commercial confidentiality - Article 9(1)(c) of the AIE Regulations states:

*“Discretionary grounds for refusal of information*

*9. (1) A public authority may refuse to make available environmental information where disclosure of the information requested would adversely affect—*

*(c) commercial or industrial confidentiality, where such confidentiality is provided for in national or Community law to protect a legitimate economic interest, or”*

The two records for which access to minutes were granted, were for projects already completed. Access was refused to 14 records - the public are not even allowed to see the dates when these meetings occurred. (see Annex 1, schedule of records, records 3.1-3.12, 4.1 & 4.2)

There is most clearly a presumption in favour of the sensitivities of developers over any rights of citizens.

The refusal has been challenged by requesting an internal review and a response is awaited. However, as this case is due to be heard by the Compliance Committee in June, I considered it important to highlighted a real life example from the perspective of the ordinary citizen who, in some locations (such as Laois) is facing development of multiple massive wind/grid developments and is effectively blocked from accessing even the most basic information.

Timeline		
15 <sup>th</sup>	Original AIE request sent to Laois County Council requesting information regarding Wind Energy Development within the context of the County Development Plan	See Annex 1 for summary of questions
28 <sup>th</sup>	Response from Laois County Council to the AIE request	Annex 1
24 <sup>th</sup>	Request for Internal Review of the AIE decision (response now awaited)	

**B. Access to justice is not equitable - based on far greater access to information and training available to developers and public sector employees than to the public (breaching Articles 3.1, 3.3, 9.4 and 9.5)**

As mentioned in the main body of complaint ACCC/C/2014/112 from the communicant (4.8.2), in 2012/2013 the EC commissioned a report into the implementation of Articles 9(3) and 9(4) of the Aarhus convention. The report for Ireland was prepared by Professor Aine Ryall in September 2012 and concluded:

*“The Irish authorities’ response to the access to justice obligations arising under the Aarhus Convention and EU environmental law has been largely reactive, piecemeal and minimalist. A coherent, forward-looking strategy, that involves all interested parties, is urgently required if fundamental problems in the system are to be tackled, including the fragmented legislative framework, high legal costs and the ongoing absence of accessible and user-friendly information about environmental rights and obligations.”*

This issue has at a minimum been raised at EC level in that report and at National level through complaint ACCC/C/2014/112. I.e. Irish state authorities must be fully aware of these failings.

Please see Annex 2 for information on legal training which is specific to Environmental law, planning , Projects of Common Interest and is notably technology specific i.e. windturbines!!.

Now, over 3 years from when that EC report was completed, it is worth noting that the main glowing references for attending this training course on environmental law come from public authorities (Galway Co. Council, Office of the Attorney General, Commission for Energy Regulation).

i.e. the state is effectively subsidising this training for state employees who have their course paid for by the tax payer and are entitled to attend the training during working hours (which is also paid for by the tax payer).

The burden of taking Judicial Review challenges to enforce failings in environmental decision-making seems to fall predominantly to the public. As such, it is the public who have an equal if not greater need to be supported in accessing this knowledge and information but do not have access to this training on an equitable basis because:

- Cost - the state subsidises public employees to attend, there is no subsidy for the public.
- Location - Largescale Windfarm / energy infrastructure is primarily developed in rural counties i.e. this is where the majority of the public concerned are based. The training is provided in Dublin.
- Time – the training is during working hours meaning that ordinary citizens would need to sacrifice a day’s pay or a day of personal annual leave to attend while public sector employees are paid to attend.
- Awareness, even if all the above were addressed, the average citizen is unaware of courses such as these.

This is a general failure to promote environmental education regarding how to access justice in environmental matters (3.1 & 3.3), it reinforces an existing barrier to justice (9.5) and undermines an already inadequate situation with regard to access to justice on an equitable basis.

**V. Provisions of the Convention alleged to be in non-compliance**

Article 4 Access to Environmental Information, paragraph 1

Article 3, General Provisions, paragraph 3

Article 9, Access to Justice, paragraph 4 and 5

## VI. Nature of alleged non-compliance

### **Access to Environmental Information (breaching Article 4.1)**

#### **Article 4 - ACCESS TO ENVIRONMENTAL INFORMATION**

*1. Each Party shall ensure that, subject to the following paragraphs of this article, public authorities, in response to a request for environmental information, make such information available to the public, within the framework of national legislation, including, where requested and subject to subparagraph (b) below, copies of the actual documentation containing or comprising such information: ....*

As the 'Aarhus Convention: An Implementation Guide' Second Edition clarifies in relation to the information pillar:

*"Under the Convention, access to environmental information ensures that members of the public are able to know and understand what is happening in the environment around them. It also ensures that the public is able to participate in an informed manner."*

Also, page 54 of the Aarhus implementation guide explains that there is a presumption in favour of disclosure particularly for environmental information falling under Article 2, paragraph 3 (b).

Planning & information meetings between the local planning authority and industrial windfarm developers are effectively being conducted in secret as access to that information has simply been refused. (see Annex 1). It is also known that windfarm developers in Laois have entered into agreements with private landowners on a confidential basis. Ordinary citizens have no access to the information regarding the very significant developments which are being planned in the environment around them.

This information refusal has been challenged and a response is currently awaited, but it demonstrates the culture of presumption in favour of protecting developer's interests above the rights of citizens.

### **Access to justice on an equitable basis (breaching Articles 3.1, 3.3, 9.4 and 9.5).**

#### **Article 3 - GENERAL PROVISIONS**

*1. Each Party shall take the necessary legislative, regulatory and other measures, including measures to achieve compatibility between the provisions implementing the information, public participation and access-to-justice provisions in this Convention, as well as proper enforcement measures, to establish and maintain a clear, transparent and consistent framework to implement the provisions of this Convention.*

*3. Each Party shall promote environmental education and environmental awareness among the public, especially on how to obtain access to information, to participate in decision-making and to obtain access to justice in environmental matters.*

#### **Article 9 – ACCESS TO JUSTICE**

*4. In addition and without prejudice to paragraph 1 above, the procedures referred to in paragraphs 1, 2 and 3 above shall provide adequate and effective remedies, including injunctive relief as appropriate, and be fair, equitable, timely and not prohibitively expensive. Decisions under this article shall be given or recorded in writing. Decisions of courts, and whenever possible of other bodies, shall be publicly accessible.*

*5. In order to further the effectiveness of the provisions of this article, each Party shall ensure that information is provided to the public on access to administrative and judicial review*

*procedures and shall consider the establishment of appropriate assistance mechanisms to remove or reduce financial and other barriers to access to justice.*

The Irish State provides no training or access to training for the public in legal matters such as judicial review, planning matters re. wind turbines, projects of common interest or other relevant environmental legislation. Limited access to knowledge and training on these laws, rights and process is a significant barrier to justice. (9.5)

However, the State clearly subsidises public servants to attend such training and allows them to attend such courses during working hours. As the public do not have equal access to this training and information, access to justice is definitely not equitable (9.4).

## **VII. Use of domestic remedies**

This information is provided in support of complaint ACCC/C/2014/112.

The refusal of Access to Environmental Information has been challenged through a request for internal review and a response is awaited.

There is no domestic remedy for the lack of access to legal training – this represents a general failure to implement a provision of the convention.

## **VIII. Use of other international procedures**

This information is provided in support of complaint ACCC/C/2014/112

## **IX. Confidentiality**

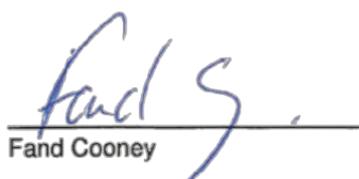
Confidentiality is not requested

## **X. Supporting documentation**

Supporting documentation is contained directly within this submission as follows:

- Annex 1 – Laois Co. Co response to a request for Environmental Information incl. the schedule of records to which access was granted / refused (28<sup>th</sup> April 2016).
- Annex 2 – Training in Environmental & Planning Law (30<sup>th</sup> May 2016)

## **XI. Signature**

  
Fand Cooney

01.06.2016