

To: Secretariat Aarhus Convention Compliance Committee

From: Pat Swords, Neil Van Dokkum and David Malone

Date: 3/09/2017

Re: Update on ACCC/C/2014/112 September 3rd 2017

Attachments:

- **1: Information Note: Review of the Wind Energy Development Guidelines 2006: “Preferred Draft Approach”**
- **2: Terms of Settlement on Judicial Review 2014 No. 712 JR**
- **3: Department’s Planning Advisor’s Report and Decision-Making on Proposed Ministerial Direction**
- **4: Order of Certiorari on Judicial Review 2016 No. 976 JR**

Dear Fiona

As the Compliance Committee is due to meet next week and to discuss Communication C-112, we would like to take this opportunity to update you on some recent developments. Section 4.7 of the Communication addressed Article 8 of the Convention and the public participation on the revised Wind Energy Guidelines. An ‘Information Note: Review of the Wind Energy Development Guidelines 2006: “Preferred Draft Approach”’ was adopted in June 2017¹, see Attachment 1, and will be subject to Strategic Environmental Assessment, on the basis of the recent decision of the European Court of Justice C-290/15²:

- *“Articles 2(a) and 3(2)(a) 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 must be interpreted as meaning that a regulatory order, such as that at issue in the main proceedings, containing various provisions on the installation of wind turbines which must be complied with when administrative consent is granted for the installation and operation of such installations comes within the notion of ‘plans and programmes’, within the meaning of that directive”.*

In adopting the “Preferred Draft Approach” no account was given to the previous consultation on the ‘proposed draft revisions to the noise, setback distance and shadow flicker aspects of the 2006 Guidelines’ conducted in December 2013, which received over 7,500 submissions. Furthermore, within the context of ruling of C-290/15 that such a regulatory order comes within the meaning of ‘plans and programmes’, it is relevant to review the context of the “Preferred Draft Approach” with respect to the Maastricht Recommendations and Article 6(4) of the Convention:

- 80. *“When all options are open” may be read as a time when any option could still be chosen as the preferred option. Some examples of situations when all options might no longer be considered open could include:*
 - *When a public announcement of a preferred option has been made even though the plan or programme has not yet been adopted;*

At the hearing on Communication C-112 at the Committee’s 53rd Meeting in June 2016, in relation to Article 7 of the Convention and Ministerial Direction to overrule

¹ <http://www.dccae.gov.ie/en-ie/energy/topics/Renewable-Energy/electricity/onshore/Pages/Wind-Onshore-Landing-Page.aspx>

² <http://curia.europa.eu/juris/liste.jsf?num=C-290/15>

County Development Plans (Section 4.6 of the Communication), discussion was held with respect to the on-going High Court challenge to the Ministerial Direction to overturn the Donegal County Development Plan by Councillor John Campbell, although the Court details were not then available. The following Attachments summarise the relevant details, related to these High Court proceedings, which are now over:

- Attachment 2: Terms of Settlement on Judicial Review 2014 No. 712 JR. The relevant Direction was quashed and remitted back to the Minister with a direction to reconsider.
- Attachment 3: Department's Planning Advisor's Report and Decision-Making on Proposed Ministerial Direction. These were obtained following a Freedom of Information request by Councillor John Campbell on the 14th November 2016 for documentation by department officials relating to the Ministerial Direction to the Donegal County Development Plan. A point to notice here is that while the public participation was summarised in the first document it played no part in the subsequent decision-making, which was solely based on achieving national targets.
- Attachment 4: Order of Certiorari on Judicial Review 2016 No. 976 JR, which Councillor John Campbell took in relation to the Ministerial Direction of the 6th October 2016 (See Attachment 3 above). When the matter came to Court, it was not contested by the State, hence no judgement is available.

If you have any queries, please do not hesitate to contact us.