



Comhshaol, Pobal agus Rialtas Áitiúil
Environment, Community and Local Government



UNITED NATIONS
ECONOMIC COMMISSION FOR EUROPE

Ms Fiona Marshall
Secretary to the Aarhus Convention Compliance Committee
Palais des Nations, Room 429-4
CH-1211 GENEVA 10
Switzerland

10th June 2016

Your Ref: ACCC/C/2014/112

**RE: COMMUNICATION TO THE AARHUS CONVENTION COMPLIANCE COMMITTEE
CONCERNING ACCC/C/2014/112**

Dear Ms Marshall,

We refer to your correspondence dated 19th May 2016 relating to the above and our response is set out below.

We make this submission supplemental to our original response filed on 30th November 2015 and, more particularly in response to the submission of the Communicants dated 2nd January 2016 and amicus briefs filed on behalf of Francis Clauson on 30th January 2016 and Fand Cooney on 1st June 2016. It is not proposed to repeat submissions already made in

our Response and we note that many of the arguments raised by the Communicants and those filing amicus briefs have already been dealt with in our Response. These issues can be further addressed by way of oral argument.

1. Reply of the Communicants

1.1. At the outset it is noted that despite submitting a lengthy reply to the response submitted by Ireland, the Complainants do not address the key arguments underpinning Ireland's response to their complaint. Much of the Complainants' arguments are premised on the contention that the NREAP was adopted by Ireland in breach of the public participation requirements of Article 6 of the Convention and that decision makers tasked with granting or refusing development consent for wind energy projects are not prepared to consider whether the policy reflected in the NREAP is invalid and are not prepared to set aside national policy such as the NREAP to which they are legally obliged to have regard. As previously noted, the NREAP was adopted in its current form in 2010 some two years before Ireland ratified the Convention.

1.2. There is no obligation on a Party to re-visit the substantive merits of decisions made prior to ratification of the Convention (even where those decisions, if made subsequent to ratification, would be subject to its provisions) or to treat such decisions as inapplicable in light of the Convention. This includes policy decisions which may have a bearing on subsequent planning decisions which are made after the adoption of the Convention. Ireland disputes the contention that because certain policy decisions had been made prior to the ratification of the Convention, public participation in the downstream planning decisions is "pro forma". The failure of the Complainants to deal substantively with this issue is significant.

1.3. It is further noted that the Communicants have furnished the Committee with a copy of the decision of the Commissioner for Environmental Information in Case CEI/13/0005 *Duncan v. Sustainable Energy Authority of*

Ireland. The Communicants seek to impugn the reasoning of the Commissioner in this case. It would not appear that an appeal has been lodged to the High Court in this case and therefore there has been a failure to exhaust available domestic remedies. Ireland repeats its submissions at paragraph 6.2 of its Response with regards to the procedure available for challenging a decision of the Commissioner for Environmental Information. The merits of the decision of this Commissioner are not an appropriate matter for the Committee to consider. Ireland relies again on the findings of the Committee in communication ACCC/C/2007/22(France).

1.4. By way of general update in respect of the position of the Commissioner for Environmental Information, we enclose herewith a copy of the Commissioner for Environmental Information Annual Report 2015 which outlines the activities and decision of the Commissioner for 2015. The Commissioner has made significant progress in investigating and issuing determinations on all appeals that are currently lodged with his office. In 2015, 15 formal decisions on appeals were issued, the largest number of decisions to be issued in a single year since the establishment of this office. At present there are 27 appeals pending before the Commissioner. Investigators are currently progressing 1 outstanding appeal from 2013 2014 as well as working on appeals lodged in 2015 predominantly lodged in 2015 and 1 in 2016..

1.5. Ireland takes issue with the allegation that implementation of Directive 2009/28/EC has failed to comply with the Convention. Ireland denies that there has been any failure to comply with the Convention with regards to the manner in which compliance with the binding targets established by Directive 2009/28/EC is to be achieved. Ireland encloses herewith a copy of the third progress report¹ on the promotion and use of energy from

¹ Annex 1 Ireland Third Report on NREAP

renewable sources in Ireland, submitted pursuant to Article 22 of Directive 2009/28/EC to the European Commission on 4th April 2016.

- 1.6. The Communicants are not correct in their statement that '*no further compliant public participation has occurred in Ireland in relation to the renewable energy programme*'. By way of example, both the National Development Plan and the Energy Policy Framework 2007-2020 were the subject of public consultation. The Energy Policy Framework 2007 – 2020 was informed by the outcome of the consultation process on the Government's Green Paper on Energy Policy. Over 100 submissions were received and discussions held with a number of key stakeholders. In addition a debate was held in Dáil Eireann on the Green Paper on Energy Policy during the consultation period.
- 1.7. It should be noted that the adoption of both these policy documents pre-date the ratification of the Convention by Ireland. Furthermore, the Department of Communications, Energy and Natural Resources recently launched *White Paper – Ireland's Transition to a Low Carbon Energy Future*, which was the subject of a broad and comprehensive public participation process. The Green Paper on Energy Policy was published in May 2014. Following the publication of the Green Paper on Energy Policy in May 2014, the Department undertook a public consultation process which included analysis of over 1,200 written submissions and thirteen stakeholder seminars on the various priority areas highlighted in the Green Paper. The views submitted on this and other matters have been considered in the formulation of the Energy White Paper, which was published in December 2015.
- 1.8. On 5th May 2016, the Government of Ireland published "*A Programme for a Partnership Government*", the document that underpins the formation of the Government of the Fine Gael political party and certain Independent TDs (Members of Dáil Eireann). As part of this programme and in response to

views expressed by members of the public, the Government has committed to carry out a review of the wind farm planning guidelines. Such review will be informed by public consultation and best international practice.

2. Amicus Brief filed by Francis Clauson

2.1 It is noted that the main issue arising in the context of this amicus brief relates to alleged health effects arising from wind farms. It is noted that the primary emphasis of Mr Clauson relates to the substance of the question of whether there are negative health effects arising from wind farms. It is respectfully submitted that questions of that nature fall outside of the remit of either the Aarhus Convention or this Committee.

2.1 Ireland re-states its general position as outlined at paragraph 10.8 of its Response. The Department of Environment, Community and Local Government has liaised with the Department of Health in relation to the health aspects of wind farms and based on this the Department is not aware of any reliable and consistent evidence that wind farms directly cause adverse health effects in humans. The contention that Ireland has “cherry picked” findings or misrepresented the statements of the Department of Health is strenuously disputed and the accuracy of Ireland’s original submission is borne out when the full text of the documents appended to Mr Clauson’s brief are examined. (The Department of Health has not conducted any research nor made any “findings” on the effects of wind turbines on public health; its comments are based on peer reviewed international research.)

3. Amicus Brief Filed by Fand Cooney

3.1. We note the amicus brief filed on behalf of Fand Cooney. The principle complaint raised by Ms Cooney relates to a request for access to environmental information submitted to Laois County Council which was

granted in part and refused in part. It is noted that that portion of the request which was refused is the subject for a request for an internal review pursuant to Regulation 11 of the European Communities (Access to Information on the Environment) Regulations 2007 (hereinafter the 'AIE Regulations') and that that review has not yet been determined. Should Ms Cooney not be satisfied with the outcome of the internal review, she is entitled to lodge an appeal with the Commissioner for Environmental Information pursuant to Regulation 12 of the AIE Regulations. Thereafter, any party has the entitlement to lodge an appeal to the High Court in accordance with Regulation 13 of the AIE Regulations. The legal costs regime for any such appeal will be governed by Part 2 of the Environment (Miscellaneous Provisions) Act, 2011.

3.2. It is respectfully submitted that it would not be appropriate for the Committee to engage in any analysis or consideration of a request for environmental information that is currently pending before Laois County Council in respect of an internal review. It would further be inappropriate to engage in any consideration of the decision making process that relates to this request as the process is only at stage 2 (of a possible 4). In that regard, Ireland repeats the submissions made at paragraph 6.3 and 6.4 of the Response.

3.3. In respect of the submission made at section B of the amicus brief, Ireland notes that the training course complained of is provided by a private training provider, which is not subsidised by the State or arranged by the State. In so far as Ireland is aware, Ms Cooney is entitled to attend such training courses or any other training courses which are provided on issues of this nature. No obligation arises from the Convention for a State Party to provide training course on environmental law for members of the public. The arguments raised in relation to the inequity of public authority officials being able to attend training during work hours, having this training paid for by their employers are raised at length in the more recent communication to the

Compliance Committee (ACCC/C/2015/132). It is not proposed to respond to these complaints in the context of this response save to note the undoubted benefit in providing appropriate training to those public officials with responsibility for matters covered by the Convention.

3.4. It appears that the complaint made by the amicus in this regard is based on Article 3.3 (the obligation to promote environmental education and awareness) and Article 9.4 (the procedures for access to justice are to be effective and fair) and 9.5 (provision of information on access to justice and establishment of appropriate assistance mechanisms). None of these Articles contain an obligation to provide the public with training in environmental law. The obligation on a State Party to provide information is amply met by Ireland. The following is a non-exhaustive sample of the information made available to the public on access to justice in planning matters on-line at the following locations:

http://www.pleanala.ie/guide/appeal_guide.htm

http://www.pleanala.ie/publications/2012/j_r_notice.pdf

<http://www.pleanala.ie/sid/sidpp.htm>

http://www.citizensinformation.ie/en/government_in_ireland/national_government/standards_and_accountability/judicial_review_public_decisions.html

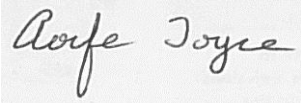
http://www.citizensinformation.ie/en/environment/environmental_law/judicial_review_in_planning_and_environmental_matters.html

4. As outlined in the Response and in this supplemental Response, Ireland has transposed the Convention in a robust manner that ensures proper public participation at different stages of various decision making processes. It is respectfully submitted that the core complaint of the Communicants (and the authors of the amicus briefs) relates to the merits and/or substance of various

decisions rather than the process by which those decision were reached. In the circumstances there is no basis for the complaints raised against Ireland.

Please do not hesitate to contact the undersigned if you require any further information.

Yours sincerely,

A handwritten signature in cursive script that reads "Aoife Joyce". The signature is written in black ink on a light-colored background.

Aoife Joyce

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