



EUROPEAN COMMISSION
DIRECTORATE-GENERAL FOR ENERGY

Director-General

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Mrs V.C.K Metcalfe
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Dear Mrs Metcalfe,

Thank you for your letter received on 18 July 2012¹ whereby you requested the Commission to carry out an internal review of the Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions "Renewable Energy: a major player in the European energy market"² (hereinafter "the Communication") and the complementary information sent on 22 October 2012³.

Your request for internal review has been lodged on the basis of Article 10 of Regulation (EC) No 1367/2006 of the European Parliament and of the Council of 6 September 2006 on the application of the provisions of the Aarhus Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matter to Community institutions and bodies (hereinafter "the Regulation")⁴.

The Commission has assessed your request on the basis of the provisions of Article 10 and 11 of the Regulation. Article 10 entitles any non-governmental organisation which meets the criteria set out in Article 11 to make a request for internal review to the Community institution or body that has adopted an administrative act under environmental law or, in case of an alleged administrative omission, should have adopted such an act. "Administrative act" is further defined in Article 2(1)(g) of the Regulation as "any measure of individual scope under environmental law, taken by a Community institution or body, and having legally binding and external effects".

The Commission's services have made the following assessment of your request for internal review:

¹ Registered ARES(2012)862554

² COM(2012)271

³ Registered ARES(2012)1258774

⁴ OJ L 264, 25.9.2006, p.13

Article 11 of the Regulation:

On the basis of the information provided in your request and in your e-mail of 22 October 2012, it seems that European Platform Against Windfarms (EPAW) is an organisation that is an independent non-profit making legal person registered in France with the objective of promoting environmental protection in the context of environmental law. It has existed for more than two years, namely since 4 October 2008, and appears to be actively pursuing the objective of environmental protection as described in your e-mail of 22 October 2012. The subject matter in respect of which the request for internal review is made, namely renewable energy, is covered by EPAW's objectives and activities.

Therefore, the Commission's services consider that EPAW complies with the criteria set in Article 11 of the Regulation and is therefore entitled to make a request for internal review.

Article 10 of the Regulation:

The Commission considers that the Communication is not an act of individual scope within the meaning of Article 10 of the Regulation⁵ as the Commission's Communications are general policy documents which are not addressed to any specific stakeholder. Moreover, the Communication is not an act adopted by an EU institution having legally binding effects. It follows from Article 288 of the Treaty on the functioning of the European Union (TFEU) that only regulations, directives and decisions have such binding effects.

On the basis of these considerations, the Commission's services consider that whilst the Communication is a "major policy initiative" as you note in your request, it does not fulfil the criteria of Article 10 and therefore does not constitute an administrative act within the meaning of Article 2(1)(g) of the Regulation. The request is therefore inadmissible.

Should you not agree with the present reply, you may bring proceedings before the Court of Justice of the EU or lodge a complaint with the European Ombudsman under the conditions laid down in Articles 263 and 228 TFEU.

Yours sincerely,


Philip Lowe

⁵ This aspect is the subject of a judgement of the General Court in case T-338/2008. However, this judgement is binding on the Commission only for the specific case and therefore has no effect *erga omnes* pending the Court's assessment of the Commission's appeal against this judgement.