

The communicant's responses to questions to the parties

Question 1

Were any public consultations conducted in relation to the adoption of the National Renewable Energy Action Plan in the United Kingdom? If public consultations were conducted, please provide the Committee with relevant information.

Response

The Århus Convention stresses the 'importance of fully integrating environmental considerations in governmental decision-making and *the consequent need for public authorities to be in possession of accurate, comprehensive and up-to date environmental information*'. [Emphasis added]

Discussing Article 7, *The Århus Convention, An Implementation Guide* notes that "The requirement that Parties ensure that "due account is taken of the outcome of public participation" implies that there must be a legal basis to take environmental considerations into account in plans, programmes and policies'.

The communication said that 'At the UK level, the National Renewable Energy Action Plan [NREAP],¹ which implements the 15 per cent target for the UK by 2020, was completely rushed through and approved by both the UK and EU Commission in a period of a year in which there was (a) a complete failure to inform the public of the environmental aspects of this plan and (b) to provide the affected public with an effective opportunity to participate in the development of the plan'.

The Communicant acknowledges that there was a consultation prior to the adoption of the NREAP and that it was supported by extensive documentation but argues that the consultation failed either to address the plan's environmental impacts or meet the requirements of the Århus Convention concerning participation by the public.

The evidence presented below, which is taken from documentation supporting the consultation, shows that the position of the UK's central and devolved governments was instead that assessment of the plan's environmental impacts, despite their having significant, perhaps unprecedented, implications for the rural areas of Scotland, was to be made, at best, after the plan had been adopted.

In short, environmental issues would be addressed only after the opportunity had passed 'for early public participation, when all options were open and effective public participation can take place' [Article 6 (4)] The explicit aim of the plan is to 'fast track' approvals through the planning system in spite of unresolved environmental issues.

The evidence also shows that the authorities failed to 'take due account of the outcome of the public participation'. The pertinent documentation comprised no more than a page of comments that ignored a significant number of informed submissions critical of the authorities' assessment of renewable potential, in particular the overwhelmingly dominant position given to wind-powered electricity generation. *The Århus Convention, An Implementation Guide* notes that: 'the requirement to take into account public participation "as far as possible" establishes an objectively high standard to show in a particular case that public comments have been seriously considered'.

For a plan of such complexity and impacts, a one-page document is plainly insufficient. There is no indication of how comments critical of the dominant position given to wind power were considered in arriving at the final decision.

The map below suggests the scale of what is already under way in relation to wind farm construction and development approval in Scotland and the extent to which the plan will impact on the public and the wider environment. Published by the devolved Scottish government's statutory environmental authority, Scottish National Heritage, in July 2011, it nevertheless omits many schemes currently at relatively early stages of the planning/development cycle that are likely, as things stand, to be approved. In short, it only partly illustrates the problem.

¹ http://www.decc.gov.uk/en/content/cms/meeting_energy/renewable_ener/uk_action_plan/uk_action_plan.aspx

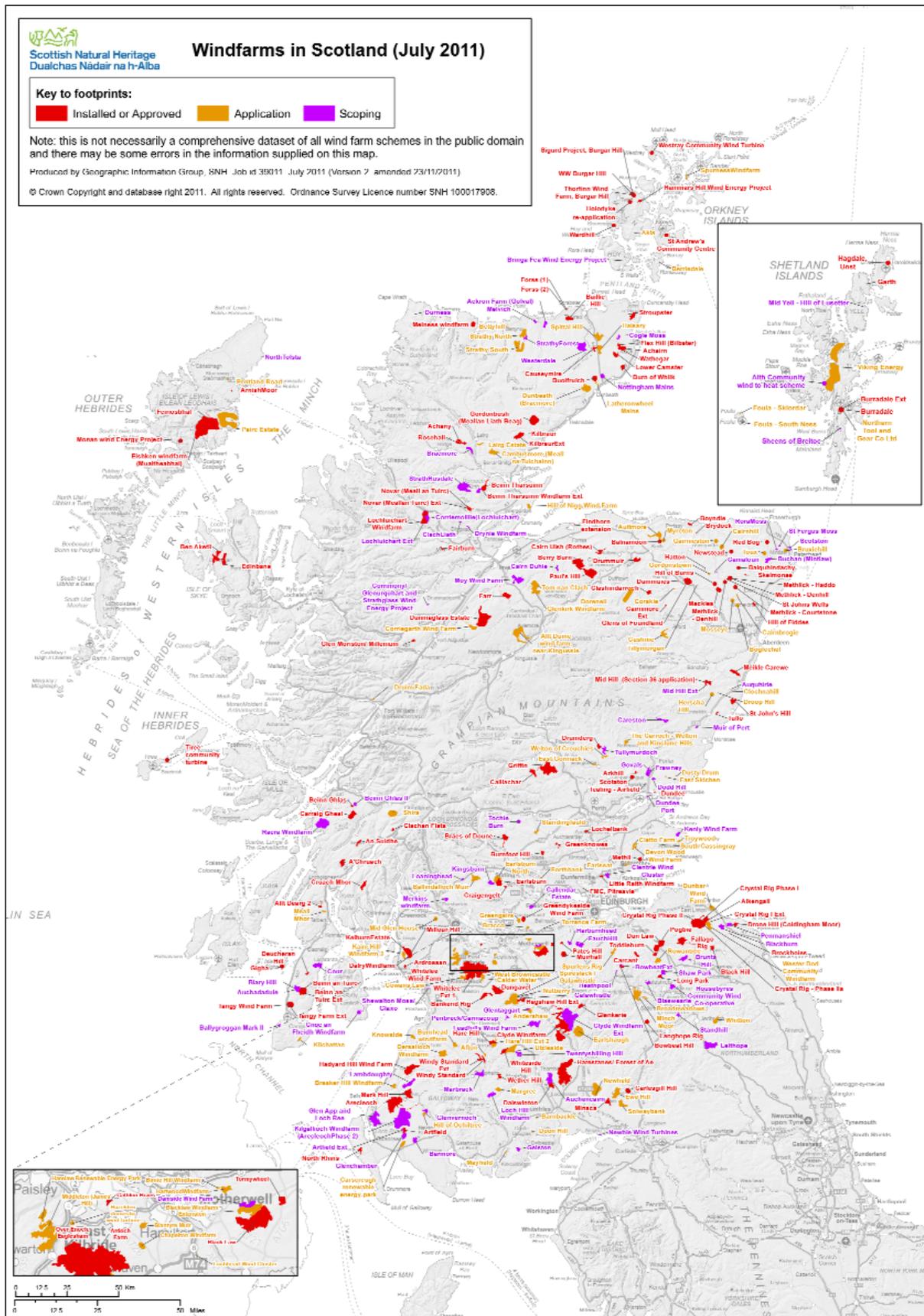


Figure 1: Scottish Natural Heritage – Wind Farms in Scotland, July 2011²

² <http://www.snh.gov.uk/docs/B961030.pdf>

The communicant's response to Question 3 further argues that the UK failed to provide information, let alone transparent information, about the savings in CO₂ emissions that the Renewable Energy Strategy is expected to achieve. Such information is self-evidently critical in enabling the participating public to evaluate the benefits, if any, that a programme of this nature, with such a scale of environmental and financial impacts, is expected to achieve.

As *The Aarhus Convention, An Implementation Guide* concludes (p 49): 'Under the Convention, access to environmental information ensures that members of the public can understand what is happening in the environment around them. It also ensures that the public is able to participate in an informed manner'.

Comments on the Consultation Process

Article 7 of the Aarhus Convention states that:

The public which may participate shall be identified by the relevant public authority, taking into account the objectives of this Convention.

The objectives include those highlighted in the Preamble, such as:

Considering that, to be able to assert this right and observe this duty, citizens must have access to information, be entitled to participate in decision-making and have access to justice in environmental matters, and acknowledging in this regard that citizens may need assistance in order to exercise their rights;

Recognizing that, in the field of the environment, improved access to information and public participation in decision-making enhance the quality and the implementation of decisions, contribute to public awareness of environmental issues, give the public the opportunity to express its concerns and enable public authorities to take due account of such concerns.

The communicant submits that at no stage in the development of the UK's Renewable Energy Strategy and the associated NREAP was any effort made by the UK authorities to inform those living in rural Scotland, who most stand to be affected of the scale and environmental impact of the wind energy programme. Consultation on Scotland's Strategic Environmental Assessment of the Renewable Energy Routemap and Electricity Generation Policy Statement³ project did not even begin until March 2012, i.e. *after* the adoption of the NREAP by the UK and EU in June 2010 (Article 4 of Directive 2009/28/EC).

Begun in March 2012, the consultation on the Strategic Environmental Assessment was accompanied by an inadequate Environmental Report. Judging by public meetings about renewable energy developments that the communicant attended, it seems that not even local authority planning officers were made aware that a consultation on a Strategic Environmental Assessment was underway. It is believed that the 'consultation process' has now closed.

Documents relevant to the Consultation on the UK's National Renewable Energy Action Plan

Section 5.3 of the NREAP states:

Alongside the publication of the Renewable Energy Strategy in 2009, we undertook analysis on the likely impact. This is published on the DECC website.⁴

Section 5.4 states:

This National Renewable Energy Action Plan is based on the UK Renewable Energy Strategy which was developed *following an extensive consultation exercise with the Devolved Administrations, regional and local Government, other public groups, the private sector and members of the public.* [Emphasis added]

Impact Assessment of UK Renewable Energy Strategy⁵

161 Strategic environmental assessment is required in accordance with Directive 2001/42/EC (the 'Strategic Environmental Assessment (SEA) Directive) for certain plans and programmes which set a framework for future development consents. The RES is not subject to strategic environmental assessment under the SEA directive because it is a strategy of the policies needed to meet 15% overall renewable energy and does not set a framework for development consents. The RES does not set out binding targets for individual sectors or technologies. The RES does not laydown specific rules on

³ <http://scotland.gov.uk/Topics/Business-Industry/Energy/EGPS2012/EGPSandRERSea>

⁴ http://www.decc.gov.uk/en/content/cms/what_we_do/uk_supply/energy_mix/renewable/res/res.aspx

⁵ http://www.legislation.gov.uk/ukia/2009/177/pdfs/ukia_20090177.pdf

which are appropriate or permissible developments in particular areas, neither does the RES provide criteria which might narrow the selection of alternatives available to the planning authority (a plan). Furthermore, the RES does not propose a set of projects within a given area (a programme).

162 Policies referred to in the RES to be implemented through plans or programmes setting the framework for development consent, will as appropriate undergo strategic environmental assessment of the plan or programme in accordance with the requirements of the SEA directive (such as that undertaken for the competition for offshore wind). DECC are currently undertaking an Appraisal of Sustainability for the Renewable Electricity Generation National Policy Statement. The Appraisal of Sustainability for the Renewable Electric Generation National Policy Statement incorporates the requirements of the SEA Directive.

163. Individual projects that are deemed to have the potential to cause significant adverse impacts are required to undertake an Environmental Impact Assessment (Directive 85/337/EEC) as part of the planning process.

172 There has been no separate or explicit assessment of the needs of rural areas.

173 Certain forms of renewable development impact disproportionately on rural areas, and there is often resistance to new developments from rural communities. Any resistance to new renewables projects has to be viewed in the light of the Government's commitment to source an increasing proportion of energy from renewable sources, in order to combat climate change. The planning system also has a role in ensuring that new developments are sited in suitable locations.

- Environmental Assessments were not completed as part of the development of the Renewable Energy Strategy. The disproportionate impact on rural communities was recognised but the Strategy adopted no measures to address it.

UK Renewable Energy Strategy⁶

6.5 The first step in establishing support for renewables deployment is to ensure that local concerns are fully respected. Communities need to have confidence that legitimate concerns about specific proposals and their location will be listened to. That is why the Government is fully committed to a planning system which integrates economic, environmental and social objectives and ensures potential conflicts between the interests of individuals, or local communities, and the needs of the nation as a whole are properly reconciled.

6.6 We are taking an approach to planning for renewables which will operate in a more strategic, evidence-based way. This will create a clearer, more transparent process for communities and help them understand the potential benefits of renewable development.

7.9 Renewable energy also has the potential for negative effects on the local environment. For example, an increase in the burning of biomass could affect local air quality, inappropriately located wind farms could affect landscapes, and new tidal infrastructure could affect marine species and important habitats. These impacts need to be addressed in line with the principles of sustainable development, taking full account of the costs and benefits.

- The impacts of wind-powered generation associated with landscape, noise and biodiversity were not assessed.

Appendix A – Analysis of Responses to Consultation:

Protecting the security of the UK's electricity supply by focussing on smart metering and improved storage capacity and avoiding too heavy a reliance on wind energy;

Comment: A slim majority of respondents disagree with the Government's assessments of the potential of different renewable electricity technologies, there being a body of opinion that marine energy, solar energy and hydrogen storage have been underemphasised at the expense of wind energy;

UK Renewable Energy Consultation: Onshore wind⁷

3.2.2 As of May 2008, there are 165 onshore wind farms operating in the UK, providing a combined generating capacity of 2 GW (2.5% of current UK capacity). An interactive map of the operational

⁶ http://decc.gov.uk/assets/decc/What%20we%20do/UK%20energy%20supply/Energy%20mix/Renewable%20energy/Renewable%20Energy%20Strategy/1_20090717120647_e_@@_TheUKRenewableEnergyStrategy2009.pdf

⁷ http://decc.gov.uk/assets/decc/Consultations/Renewable%20Energy%20Strategy%20Consultation/1_20090428142549_e_@@_condocres.pdf

wind farms in the UK, together with details of each, is available at <http://www.bwea.com/ukwed/map-operational.html>.

3.2.3 If those that are under construction, those that have received planning and related consents, and those held in the planning stage are fully realised there would be an additional 366 farms, delivering a further 10 GW capacity. Our initial modelling suggests that meeting the 2020 target might involve a total of approximately 14 GW of onshore wind, equating to around 4,000 new 3 MW turbines (compared to around 2,000 turbines currently installed onshore in the UK). This would be particularly challenging, and others have estimated a slightly lower level of onshore deployment – e.g. the Renewables Advisory Board estimated that around 13 GW of onshore wind could be deployed by 2020.³⁵ Subject to planning permission, we would expect that a large proportion of onshore wind development will take place in Scotland. Planning, grid, supply chain and financial issues will be key constraints on this growth.

Q4: Are our assessments of the potential of different renewable electricity technologies correct?

3.3.2 This means being aware of the interests of local communities, listening to legitimate concerns about specific proposals and their location and giving industry as much certainty as possible on whether a project is likely to gain consent and if so when. If the risk to development is too big, investment stops flowing and could move into other countries. We therefore need to tackle delays in planning and ensure that projects for renewable energy are only refused planning permission where there are compelling reasons to do so.

Q5: What more could the Government or other parties do to enable the planning system to facilitate renewable deployment?

- There is no mention of the major access to justice deficit in UK planning as determined by the Compliance Committee in Communication ACCC/C/2008/33 and the subsequent ruling by the European Court of Justice.

Renewable Energy Strategy: Analysis of Consultation Responses⁸

Those disagreeing with the assessment of potential (81 respondents) were most likely to raise the following concerns (total number of mentions shown):

(24) Wind energy being overemphasised and unreliable / perceived misplaced Government bias in favour of wind energy (a view mostly liked to be put forward here by “Others”) Comment: The carbon savings of wind turbines is minimal, is frequently overstated, often grossly, by the energy companies and is far from secure. Government strategy favours the exaggeration of the carbon savings that can be obtained by the deployment of wind energy in an attempt to meet its own unrealistic targets. (Regional NGO)

Renewable Energy Strategy – Consultation: Initial Response to Consultation Responses⁹

This one-page document concluded that:

The summary of responses shows that the majority of respondents agreed with the assessments and proposals set out in the consultation document on most issues. The majority of respondents supported retaining the Renewables Obligation and introducing a Renewable Heat Incentive, and there was significant support for introducing feed-in tariffs for microgeneration electricity. The Government has already announced that it will retain and extend the RO, and has taken powers to introduce the two new financial incentives.

- While the previous document provided a summary of the responses received, the above, despite being no more than a page long, is the only one which could be considered as a record of ‘taking due account of the public participation in the final decision’.

Conclusion

Such public consultations as was conducted on the NREAP failed to take account of the provisions of the Aarhus Convention which require the publication of information demonstrating environmental impacts and benefits and that the public is given the opportunity to participate.

⁸ http://decc.gov.uk/assets/decc/Consultations/Renewable%20Energy%20Strategy%20Consultation/1_20090428153348_e_@@_resanalysisresponses.pdf

⁹ http://decc.gov.uk/assets/decc/Consultations/Renewable%20Energy%20Strategy%20Consultation/1_20090428151412_e_@@_resinitialresponse.pdf

Responses to questions to the communicant

Question 1

The communicant at various places in the communication refers to the fact that she is a Community Councillor. Please indicate to the Committee whether the communication is being submitted in the communicant's capacity as a Community Councillor and on behalf of the Community Council of Avich & Kilchrenan or in her personal capacity.

The communicant confirms that the communication is being taken on behalf of the Community Council of Avich & Kilchrenan.

Question 2

The communicant mentions a consultation on renewable energy conducted by the Commission of the European Union in early 2012. Please provide relevant information to substantiate that this consultation was not in compliance with the Convention.

1 General

The objectives of the European Commission's consultation on its Renewable Energy Strategy state that:

The legislative framework as regards renewable energy is laid down in the Renewable Energy Directive which sets an obligatory target of 20% renewable energy in final energy consumption as well as a 10% target in transport for 2020. Given the long-term perspective of investors it is necessary already now to look beyond that year. Against the background of the EU's ambition to move towards a reduction of 80-95% of GHG emissions in a 2050 perspective, it is clear that a further strong growth in renewables will be needed beyond the 2020 targets.¹⁰

Within the context of the Århus Convention and specifically in relation to public participation in plans, programmes and policies relating to the environment (Article 7), the Commission made it clear that the Strategy¹¹ was a major policy initiative, although one could also see it as consolidating an existing programme on the environment (as the Commission's documentation suggests).

The communicant submits that public participation in decision-making on the Strategy falls within the remit of Article 7 of the Convention. On 24 January 2012, she submitted a request to the Commission under Regulation 1367/2006 for information on the environment which asked how the public consultation would be conducted, in particular what were the 'the procedures which would be employed with regard to "taking account of the public participation in the decision" and "the provisions for access to justice" [to challenge acts and omissions of the authorities]'.¹²

The Commission replied to the above on 29 February.¹² The communicant also submitted a response to the consultation process.¹³

2 The conduct of the Consultation and compliance with the Convention

Very significant financial gains are to be had by many involved in the renewables programme, a point conceded by the EU Commission in that its Strategy was explicitly linked to the 'long-term perspective of investors'. It is all but unarguable that a professionally-organised lobbying campaign has been directed at the Commission by those who stand to enjoy these benefits. This is demonstrated in Attachment 2 and by the list of those who responded to Question 2 of the Questionnaire – there were 67 Submissions from 'Industry' as opposed to 28 from NGOs (with not all of the latter supportive of the EU's policies).

With regard to ensuring public participation in a transparent and fair framework, Article 2 (5) of the Convention is clear that:

'The public concerned' means the public affected or likely to be affected by, or having an interest in, the environmental decision-making; for the purposes of this definition, non-governmental

¹⁰ http://ec.europa.eu/energy/renewables/consultations/20120207_renewable_energy_strategy_en.htm

¹¹ http://ec.europa.eu/energy/renewables/consultations/doc/20120207_renewable_energy_strategy.pdf and

<http://europa.eu/rapid/pressReleasesAction.do?reference=IP/12/571&format=HTML&aged=0&language=en&guiLanguage=en>

¹² See Attachment 1.

¹³ The submissions are posted on the strategy consultation's web site but the communicant's is not recorded due to a technical issue with on-line submissions. However, it is very similar to that of the European Platform Against Windfarms (Attachment 2, p 659).

organizations promoting environmental protection and meeting any requirements under national law shall be deemed to have an interest.

Though the renewable energy programme provides financial windfalls for some, it incurs punitive costs for others due not just to sharply rising electricity prices but also to its effect on rural communities such as that of the communicant where intrusive developments with very significant environmental impacts are proposed.

The consultation failed to take ‘the objectives of this Convention’ into account in that no effort was made to reach out to those members of the public who stand to have extensive electricity generation infrastructure built around them and who will bear its financial cost and are thus the ‘public affected or likely to be affected by’ this particular piece of environmental decision-making. The failure is illustrated by, though not limited to:

- 1 Publicising a consultation on a policy with very significant downstream impacts on *and only on* a website. This cannot seriously be considered as ensuring that the consultation is ‘properly announced’ to those who most stand to be affected by it;
- 2 The Consultation’s documentation being available only in English. Though readily accessible to those engaged in professional lobbying, English is the native tongue of fewer than 70 million of the 470 million people in the EU-27.

The Commission confirmed in February 2012¹⁴ that the general principles of and minimum standards for consultation are laid out in COM(2002) 704; it is cited as the means for implementing public participation in Article 2 of the Annex to Commission Decisions 2008/401/EC (which defines the rules of procedure for application of the ‘Åarhus Regulation’ 1367/2006). This is in spite of the fact that it predates EU ratification of the Convention.

That said, in the light of the above points, it is open to doubt whether the consultation even complied with what COM(2002) 704 lays down as the minimum standards for Consultation Target Groups and Publication.

Perhaps even more significant is the manner in which public participation was taken account of in the final decision on the EU Commission’s renewable energy policy which it presented on 6 June 2012 in *Renewable Energy – a major player in the European energy market* COM(2012) 271. Discussing the provision of feedback statements (in relation to the submissions received), this notes that:

The Commission reiterates that the main mechanism for providing feedback to participants in consultations will be through an official Commission document to be approved by the College of Commissioners, i.e., in particular, the explanatory memoranda accompanying legislative proposals.

The idea of providing feedback on an individual basis (feedback statements), as requested by some contributions, is not compatible with the requirement of effectiveness of the decision-making process. Moreover, interested parties should keep in mind that the Commission’s decision-making is based on the principle of collegiality, that is to say only the College of Commissioners is entitled to weigh up the pros and cons put forward in a consultation process and to adopt a final position in the Community interest.¹⁵

The *Åarhus Convention: An Implementation Guide* takes a sharply opposed stance by making it clear that ‘each Party shall ensure that the decision takes due account of the outcome of the public participation’:

The relevant authority is ultimately responsible for the decision based on all information, including comments received, and should be able to show why a particular comment was rejected on substantive grounds.¹⁶

The measures the EU Commission adopted for taking due account of the outcome of public participation in the final decision did not comply with the requirements of the Convention.

The Commission’s report on the responses to its consultation on the Strategy was akin to a report on a ‘vox pop’ opinion poll with a rigid framework of questions leaving little or no scope for expanding on critical issues: it was essentially a count of the percentages of respondents in agreement or disagreement with whatever simple position had been put in the question.

The communicant, the European Platform Against Windfarms (EPAW) and individuals and NGOs who pointed out the technical, environmental and legal failings of the Strategy were simply ignored:

¹⁴ Attachment 1.

¹⁵ COM(2002) 704 page 12.

¹⁶ Page 109.

no evaluation was made of the issues to which they drew attention. The Commission ignored the fact that an organisation such as EPAW represents a significant number of individuals and organisations who campaign on the issue of wind farms – details submitted to the EU’s Transparency Register suggest about 37,450 individuals from 23 countries and over 535 associated membership organisations.¹⁷

3 Request for Internal Review under Regulation 1367/2006

In association with EPAW and other NGOs, the communicant requested an internal review of COM(2012) 271.¹⁸ The many grounds for requesting the review included the following.

1 The consultation was not conducted in a fair and transparent manner in compliance with the requirements of the Åarhus Convention. In particular:

- The affected public was not adequately informed in an adequate, timely and effective manner (e.g. as noted, the documentation was presented in English only on an obscure web site);
- Insufficient information was provided to the public on critical issues such as the environmental and financial impacts of the renewable energy programme;
- The EU Commission confirmed in their reply to EPAW’s request for information of 22 January 2012 under Regulation 1367/2006 in relation to the conduct of the consultation that the procedure used for conducting the consultation was COM(2002) 704. This predated the ratification of the Åarhus Convention and did not comply with it, particularly the Convention’s requirement that due account is taken of public participation.

The Commission failed to take due account of the public participation in the final communication in that the submissions of EPAW and others critical of the EU renewable energy programme, its impacts and its lack of legal compliance were ignored.

2 COM(2012) 271 and its support documentation ignored the requirements of the Åarhus Convention – they are not even mentioned. The Commission would have been well aware of Communication ACCC/C/2010/54 and that the UNECE Compliance Committee had found that the implementation of Directive 2009/28/EC through NREAPs did not comply with the Convention and recommended that the EU adopt the necessary legislative changes to ensure compliance.

3 Claims in the communication and the associated documentation of emissions savings were not substantiated by verified data and were therefore a statement of opinion only. In particular, Member State progress reports on their NREAPs were inadequate and have not been verified by the EU Commission. The renewables programme requires a full, independent audit and the production of verified emissions savings, particularly for highly intermittent energy generation modes such as wind power.

4 The claims in the Commission’s impact assessment SWD/2012/163,¹⁹ in particular claims concerning environmental impacts, understate the considerable impacts which are occurring on human health, biodiversity, landscape, etc. It is not acceptable to make claims in relation to ‘well established environmental rules (including strategic environmental assessments and environmental impact assessments), plus the engagement of local communities as stakeholders’ when these had not been complied with in the implementation of the renewable energy programme to date.

The requisite Strategic Environmental Assessments for the NREAPs were by-passed with the EU Commission directly complicit in the failure.²⁰ The programme requires compliance with Article 7 of the Åarhus Convention (as per the ruling of the UNECE Compliance Committee): full and legally compliant Strategic Environmental Assessments should be completed before any further investment is supported.

¹⁷ Attachment 3.

¹⁸ Attachment 4.

¹⁹ http://ec.europa.eu/energy/renewables/communication_2012_en.htm

²⁰ See documentation of 10 Jan 2012 on Communication ACCC/C/2010/54:

<http://www.unece.org/env/pp/compliance/Compliancecommittee/54TableEU.html>

- 5 Finally, the communication and the measures it proposes are clearly designed to protect the business interests of those operating in a highly subsidised market created by the policies of the EU Commission. Environmental protection and the rights of the citizens with regard to public participation have been by-passed.

The communicant awaits a response to the request for internal review which, under Article 10 (2) of Regulation 1367/2006, is due by the end of September 2012 unless the Commission responds with a request for further information.

Regulation 1367/2006 is more restrictive than the objective of Article 9 of the Convention as it allows the public to challenge only very narrow categories of act. This is demonstrated by the frequency with which NGOs have been refused internal review.²¹ The Compliance Committee is, of course, well aware of access to justice issues within the EU from Communication ACCC/C/2008/32. The communicant notes that the agenda for the Committee's meeting in September 2012 includes the consideration of any pertinent new information; this presumably includes the June 2012 decision of the European General Court to adopt two decisions that separately conclude that EU legislation intended to apply the provisions of the Åarhus Convention to the EU institutions.

As the European Environmental Bureau pointed out, instead of changing the law and granting citizens their rights, the Commission has decided to appeal the rulings. See e.g. Justice and Environment, *The Functioning of the Legal Instrument of the Request for Internal Review under the Åarhus Regulation*.²²

4 Conclusions

The renewable energy consultation was not conducted in a transparent and fair manner in compliance with the objectives of the Convention. Furthermore, the EU failed to comply with article 3 (1) of the Convention where 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.

In particular, Regulation 1367/2006 and Commission Decision 2008/401/EC do not implement the necessary provisions of the Convention. That the objectives of the Convention are ignored in practice can be seen in a current consultation by the EU Commission on Energy Infrastructure in relation to Projects of Common Interest which can be implemented under certain conditions for reasons of 'overriding public interest'. Even though the only detail it has provided is the name of the various projects and a single-sentence description thereof, the position of the European Commission's DG Energy is that:

More detailed technical information is controlled by the individual project promoters and we cannot release it due to commercial confidentiality.

²¹ http://www.justiceandenvironment.org/_files/file/2009/12/rir-in-practice.pdf

²² <http://www.eeb.org/EEB/index.cfm/news-events/news/ngos-condemn-anti-democratic-move-by-european-commission/>

Question 3

At various points in the communication it is submitted that either the United Kingdom or the European Union did not comply with Articles 4 and 5 of the Convention.

- (a) With respect to article 4: Please provide the Committee with relevant information on what information was refused to the communicant and why that information was refused.
- (b) With respect to article 5: Please provide the Committee with relevant information on how the United Kingdom's or the European Union's system for providing information on renewable energy is not in compliance with article 5 of the Convention.

1 General

The two significant failures to comply with Articles 4 and 5 of the Convention were as follows.

- The principle justification for the massive expansion in wind-power under the EU and UK renewable energy programmes is that it will lead to significant cuts in CO₂ emissions ('carbon savings'). Requests to the competent authorities for access to environmental information about these savings demonstrated the absence of such information [Article 4]. As it is relevant to their function, the authorities should possess and update such information and ensure that it is transparent and readily accessible [Article 5].
- Locally, the Carriag Gheal wind farm and the associated West Loch Awe Timber Haul Route (WLATHR) fall under Article 6.²³ The competent authorities did not respond to requests for access to environmental information about the projects within the terms of Article 4 and failed under the terms of Article 5 to possess information which was relevant to their function of performing duties related to Article 6.

2 Requests for information on the environment in relation to emission savings

The original communication refers to Article 4 of the Convention and requests for information on emissions savings data in relation to:

- The EU's Intelligent Energy Europe's GP-WIND programme, in which the lead partner is the Scottish Administration;²⁴
- Questions presented to the Scottish Parliament and the conduct of the then-forthcoming Strategic Environmental Assessment of the *Scottish Electricity Generating Policy Statement* and *Renewable Energy Routemap*;
- Claims about emissions savings by the UK's Department of Environment, Food and Regional Affairs (DEFRA). When the communicant asked DEFRA for information about how these savings were calculated, it passed the request to the Department of Energy and Climate Change (DECC). DECC failed to reply.

2.1 Energy Europe's GP-WIND programme

The transparency of environmental information on Energy Europe's GP-WIND programme is now part of an appeal to the EU Ombudsman.²⁵ Information had been sought²⁶ as to whether articles on the GP-Wind website complied with the provisions of Article 5 of Regulation 1367/2007 (Quality of the Environmental Information). W Gillett, Head of Unit for Renewable Energy, European Commission, Executive Agency for Competitiveness and Innovation (EACI) replied on 7 June 2012 but only after the Ombudsman intervened.²⁷ The communicant then sought information about documentation produced by EACI officers: Mr Gillett's reply of 11 June 2012 showed that the question could not be answered.²⁸

²³ The Carriag Gheal project was subject to the Electricity Works (Environmental Impact Assessment) (Scotland) Regulations 2000; the WALTHR project was subject to the Environmental Impact Assessment (Forestry) (Scotland) Regulations 1999.

²⁴ <http://www.project-gpwind.eu/>

²⁵ Complaint 813/2012/KM.

²⁶ See Attachment 1 to the original communication.

²⁷ See Attachment 5.

²⁸ See *Response to EU Ombudsman* in Attachment 6.

2.2 The Scottish Strategic Environmental Assessment

The communication referred to the forthcoming Strategic Environmental Assessment of the *Electricity Generating Policy Statement and Renewable Energy Routemap 2020*, published by the Scottish Government for consultation in March 2012.²⁹ The Environmental Report produced as part of this provided a ‘qualitative assessment’ only of the expected savings in greenhouse gas emissions and fossil fuels and offered no description of how Scotland’s environment would evolve if the renewable energy programme were not implemented.

The communicant therefore formally asked the Scottish authorities³⁰ what measures they had implemented to ensure that the ‘qualitative assessments’, alternative proposals to achieve them and the likely state of the environment without implementation of the plan were ‘up to date, accurate and comparable’.³¹

The authorities replied to say that they were not required to generate data where ‘none already exists’ and were obliged only to ‘include the information that may reasonably be required’ for such Strategic Environmental Assessments.³²

2.3 Emissions savings and the UK’s Department of Energy and Climate Change

The communicant requested environmental information from DEFRA on 10 November 2011; DEFRA passed the request to DECC on 7 December 2011 but DECC did not respond until 14 March 2012 (after the communicant had complained to the UK Prime Minister). DECC stated that:

Research shows that increased penetration of renewable energy technologies could lead to substantial carbon savings within the UK power sector of around 400 Mt of CO₂ to 2030.

When asked under Environmental Information Regulations for the source of the claim, DECC replied³³ that it was the *Renewable Energy Strategy (2009)* and related analyses.³⁴ However, it was apparent that the *Strategy* merely documented computer modelling of emissions savings arising from the deployment of wind power and gave no information about the underlying assumptions.

DECC responded to a follow-up question about these assumptions by providing an internet link to a broadly similar document, *Implementation of the EU’s 2020 Renewable Target in the UK Electricity Sector: Renewable Support Schemes*.³⁵

Others are known to have approached DECC with requests for accurate data for emissions cuts attributed to the deployment of wind power in the UK. In a memorandum to the UK Parliament’s Energy and Climate Change Committee, which took evidence on *The Economics of Wind Power* in July 2012,³⁶ Prof Per Bullough commented that:

The reduction in carbon emissions through wind energy deployed in the UK must be measured empirically, not just guessed. Since it cannot be assumed that one unit of wind completely replaces one unit of fossil fuel, the only way to know how much carbon is being saved is to measure it. However, publicly available estimates of the emissions savings from wind in the UK appear to be little more than a guess; these do not in my view meet rigorous scientific standards. In correspondence in 2010 with DECC, I requested data for the measured emissions savings from wind energy in the UK. I was told that these data were not centrally held by government. This is an extraordinary admission and it means that we simply do not know if current energy policy in the UK is delivering any emissions reductions at all.³⁷

DECC replied in similar terms to a Freedom of Information request for data on emissions cuts made by Dr John Etherington.³⁸ The Fife Wind Farm Action Group has published a statement from George Wood, a retired National Grid power systems operations manager, noting that:

I offered Chris Huhne (former Secretary of State for Energy and Climate Change) and DECC to set up a team of unbiased Engineers and Mathematicians that would, through my leadership, evaluate the UK’s power network to determine the major CO₂ emissions question, and all I received from

²⁹ <http://scotland.gov.uk/Topics/Business-Industry/Energy/EGPS2012/EGPSandRERSea>

³⁰ Under the terms of the Environmental Information (Scotland) Regulations 2004.

³¹ Paragraphs 4 (1) and 5 (1) (4) of the Environmental Information (Scotland) Regulations of 2004 describe the obligations on public authorities to keep environmental information and to ensure that it is up to date, accurate and comparable.

³² See letter of 4 April 2012, Carlin, Directorate for the Built Environment to Metcalfe, Attachment 7.

³³ 11 May 2012, reference 12/0617.

³⁴ http://www.decc.gov.uk/assets/decc/what%20we%20do/uk%20energy%20supply/energy%20mix/renewable%20energy/renewable%20energy%20strategy/1_20090717120647_e_@@_theukrenewableenergystrategy2009.pdf

³⁵ 5 July 2012, reference 12/1009.

³⁶ <http://www.publications.parliament.uk/pa/cm201213/cmselect/cmenergy/writew/517/contents.htm>

³⁷ <http://www.publications.parliament.uk/pa/cm201213/cmselect/cmenergy/writew/517/m69.htm> – Go to Wind 69.

³⁸ http://www.whatdotheyknow.com/request/empirical_measurement_of_fossil

Charles Hendry through my local MP, Jeremy Wright, was an answer that one MW of energy generated by wind-turbines is one MW of CO₂ emissions saved from conventional energy generation. This is clearly *not* the case.³⁹

3 Requests for environmental information relating to Carraig Gheal and WLATHR

The communication referred to a failure to provide access to documentation on alternative routings for the WLATHR project, a matter still unresolved. The communicant made repeated requests for access to the Environmental Assessment which, as the competent authority, Forestry Commission (Scotland) was required to complete under Article 3 of the Environmental Impact Assessment Directive and the transposing regulations. In reply, Forestry Commission (Scotland) always referred only to environmental information submitted by Green Power, the Carraig Gheal wind-farm developer, and Forest Enterprise, a public body. No environmental assessment of the project was performed by the competent authority as part of the decision-making process. This failure was highlighted in the complaint referred to in the communication.⁴⁰

However, Jean-Francois Brakeland, reporting closure of the complaint file on 22 March 2012, noted that, with regard to Article 3 of the Environmental Impact Assessment Directive, ‘there was nothing in the judgement (C-50/09) that would oblige the competent authorities to produce their own environmental assessment study’.⁴¹ The matter is now part of the appeal to the EU Ombudsman.⁴²

The breach of Article 5 was also discussed in the communication, namely the absence of emissions data to justify the decision despite claims that it would ‘make a valuable contribution towards achieving renewable energy targets which aim to combat the effects of climate change’. As explained below, there is no foundation for the claim.

As discussed in the communication, documentation of the studies or feasibility studies for the WLATHR routing developed originally under the European Regional Development Fund has never been made available. Neither has the Environmental Impact Assessment which should have been completed by the Forestry Commission, which has a statutory responsibility under Article 3 of the Environmental Impact Assessment Directive.

As such documentation was clearly relevant to its function, this is a failure under the terms of Article 5. It is also a failure under Article 6, which requires that planning be conducted in a transparent and fair manner with the reasons and consideration for decisions made accessible to the public.

Attachment 6 discusses the failure of DG Environment to enforce the matter. The ruling in C-50/09 is clear on the obligations of the competent authority to complete such an environmental assessment – one must be made available if the citizen is to have the possibility of deciding, with full knowledge of the relevant facts, whether there is any point in applying to the courts, i.e. to facilitate rights under Article 9 of the Convention. The decision of the section of the EU Commission responsible for enforcing the Convention to dismiss the CHAP complaint on such a basis is a breach of obligations under Article 3 (1) of the Convention to implement proper enforcement measures to establish and maintain a clear, transparent and consistent framework to implement the provisions of the Convention.

4 Compliance with Article 5 in relation to emissions savings

As parties to the Åarhus Convention, the EU and the UK are required under Article 5 to ensure that:

Public authorities possess and update environmental information which is relevant to their functions.

Each Party shall ensure that, within the framework of national legislation, the way in which public authorities make environmental information available to the public is transparent and that environmental information is effectively accessible.

The justification for the massive expansion in wind power now occurring as part of the implementation of EU and UK renewable energy targets is that the technology provides significant reductions in greenhouse gases.⁴³ However, not only have no data verifying emissions savings been provided but the position of the EU and the UK on emissions savings from intermittent generation sources contradicts that of professionals responsible for the design and operation of power grids. This is discussed below.

³⁹ <http://fifewindfarms.org.uk/wind-turbines-do-they-increase-carbon-emissions/>

⁴⁰ EU CHAP(2010) 02125.

⁴¹ <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:62009CJ0050:EN:NOT>

⁴² Complaint 813/2012/KM; see Attachment 6.

⁴³ See e.g. Com(2011) 624, Section 3.2. http://ec.europa.eu/clima/policies/g-gas/docs/com_2011_624_en.pdf

- About 100,000 MW of wind-power capacity is currently installed in the EU-27 as a result of EU and Member State support programmes, a nine-fold increase over the period 1999 to 2009. According to the EU Commission, wind power can now deliver six per cent of the EU's electricity, a figure that is projected to increase dramatically.⁴⁴

4.1 The position of the EU

The mandatory targets for the EU-wide implementation of renewable electricity generation by Directive 2001/77/EC were significantly raised by the 20-per-cent-renewable-energy-by-2020 target imposed by Directive 2009/28/EC. Though the former predated ratification of the Århus Convention, the latter did not and is subject to its obligations. The main document used in the build-up to setting the new target, the *Renewable Energy Road Map, COM(2006) 848* [the Roadmap], stated that:

Greenhouse gas emissions, including CO₂ emissions, from renewable energy sources are either low or zero. Increasing the share of renewables in the EU fuel mix will therefore result in significantly lower greenhouse gas emissions.⁴⁵

It added that renewable energy sources built to achieve the 20 per cent target would reduce annual CO₂ emissions by between 600 and 900 Mt in 2020. The claim relies on the PRIMES computer model. This has proved controversial in that it remains the private property of the National Technical University of Athens and, though its assumptions have been published, independent parties have not been able to replicate its results.

During consultation on the Roadmap, the EU Commission reported that 'A few organisations from diverse sectors explicitly criticised the PRIMES model regarding its transparency'⁴⁶ but the remark is misleading in that there *are* only a few organisations with the skills to evaluate the model. In any case, the final report of the Advisory Group on the Roadmap was explicit:

Recommendation Fifteen: The PRIMES model should be made publicly available so that its results can be replicated by interested parties and, to the extent that the PRIMES model is used to support the Roadmap, the assumptions and technology costs should be made explicit.⁴⁷

Some insight into the key assumptions is to be found in SEC(2006) 1719, a Commission Staff Working Document relating to the Roadmap which explains that 'the assumption that CO₂ savings per percentage point increase of renewable energy's share is constant'.⁴⁸

Unequivocally, the notion being advanced is that a MWh of wind-generated energy input to the grid displaces all the emissions that would otherwise arise from a MWh of fossil-fuelled generation. No allowance is made for the need to keep fossil-fuelled plant running at all times to balance wind power's volatile and intermittent input or that the efficiency of fossil-fuelled plant falls as its load falls. It is assumed, but never demonstrated, that the efficiency of displacement is 100 per cent. The fallacy (for such it is) is a constant throughout EU documentation, as the communication noted in the context of the GP-Wind project:

The annual emission savings are estimated by multiplying the total annual energy output by the emission factor for the counterfactual case (i.e. coal fired generation, fossil fuel mix generation and average country grid mix generation).⁴⁹

However, when it comes to providing information to support the integrity and transparency of the claim, there are significant failures to comply with the Århus Convention. In relation to the GP-Wind project,⁵⁰ Mr Gillett admitted that interim project outputs such as the published thematic case studies were not examined to see whether the results were 'accurate, up to date and comparable'.

Such an admission demonstrates that it is impossible for the EACI to claim that its responsibilities were being carried out despite their letter of 7 June.

Section 5.3 of the EU Commission's template for preparing Member States' NREAPs concerns the assessment of impacts (see Figure 2, below). In the event, nineteen Member States left the form blank

⁴⁴ http://ec.europa.eu/energy/renewables/wind_energy/doc/2011_wind_snapshot.pdf

⁴⁵ *Renewable Energies in the 21st century: building a more sustainable future*:
<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:52006DC0848:EN:NOT>

⁴⁶ SEC(2011) 1569 Part 3/3. http://ec.europa.eu/energy/energy2020/roadmap/doc/sec_2011_1569_3.pdf

⁴⁷ SEC(2011) 1569 Part 1/3. http://ec.europa.eu/energy/energy2020/roadmap/doc/sec_2011_1569_1.pdf

⁴⁸ http://ec.europa.eu/energy/energy_policy/doc/05_renewable_energy_roadmap_full_impact_assessment_en.pdf. See 5.1.3

⁴⁹ *Good Practice Wind Thematic Case Studies Drafts, Themes 1-8*;
http://www.seai.ie/Renewables/Wind_Energy/Good_Practice_Wind/

⁵⁰ See communicant's response to EU Ombudsman, Attachment 6.

5.3. Assessment of the impacts (Optional)

Table 13: Estimated costs and benefits of the renewable energy policy support measures:

Measure	Expected renewable energy use (ktoe)	Expected cost (in EUR) – indicate time frame	Expected GHG reduction by gas (t/year)	Expected job creation

Figure 2

while others, such as the UK, provided little or limited information. On behalf of the communicant and others, Scottish MEP Struan Stevenson wrote in February 2012 to the EU Energy Commissioner to point out breaches of the Åarhus Convention, adding that:

These National Renewable Energy Action Plans, along with Strategic Environmental Assessments (SEAs) are vital tools for informing the public about environmental objectives, alternatives and impacts. They also provide an opportunity for stakeholders to participate in decision-making process. If the NREAPs and SEAs are not completed properly then the Commission simply cannot allow legislation to proceed.

The EU Energy Commissioner replied that completing Section 5.3 of the NREAP was an optional reporting requirement ‘to avoid an excessive administrative burden on the Member States’⁵¹ but did refer to Article 22 of Renewable Energy Directive 2009/28/EC and the obligation of Member States to report on estimated greenhouse gas savings, noting that these reports were now available on the Commission’s Transparency Platform.

This issue has already been raised by another communicant⁵² though, as it was raised at a late stage, it was not considered by the Committee.

It is clear that the first NREAP progress reports, now on the EU website,⁵³ also make no allowance for concomitant losses when claiming greenhouse gas cuts – they assume that displacement efficiency is 100 per cent.

Hans van Steen, Head of Unit, Directorate General for Energy, European Commission confirms that the Directorate has no means of ensuring the transparency of information on the NREAP progress reports. The EU Commission simply does not have a specified method for calculating emission savings for intermittent renewables such as wind.

It seems it is up to the public at large, not the Directorate General for Energy, whatever its obligations under the Convention, to judge the transparency of the information provided.⁵⁴ However, members of the public almost inevitably have to make such assessments in the arduous context of a planning application or appeal.

Incidentally, the Irish NREAP progress report *did* describe limitations in the methodology used to calculate greenhouse gas emissions though it nevertheless argues that it provides useful indicative results.⁵⁵ However, the report also ignored reliable and readily available data that presented a very different picture of the emissions performance of the Irish grid. This point has wider relevance and is discussed below.

Finally, the Commission reported in December 2005 on the experience gained from the application and coexistence of the different mechanisms renewables support used in different Member States in COM(2005) 627 – *The support of electricity from renewable energy sources*.⁵⁶ Annex 5 is a chapter called *Intermittency in production and balancing power: need for an appropriate combination of internal market and*

⁵¹ Reference JB/cw (2012) 131731 dated 23.03.2012.

⁵² See information on communication ACCC/C/2010/54 submitted 13 March 2012 at: <http://www.unece.org/env/pp/compliance/Compliancecommittee/54TableEU.html>

⁵³ http://ec.europa.eu/energy/renewables/reports/2011_en.htm

⁵⁴ See note 51.

⁵⁵ See note 52.

⁵⁶ <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2005:0627:FIN:EN:PDF>

renewables regulation. It recognises that wind power, as an intermittent generation source, increases grid balancing costs (i.e. that displacement is not 100 per cent efficient).

In simple terms, weather systems which produce winds strong enough to generate significant wind-power output are typically relatively fast moving; conventional power plants have to be kept on 'hot stand-by' and ready to ramp back up as soon as the wind drops. The output of a wind turbine is proportional to the cube of wind speed – when wind speed halves, the output of the turbine goes down by a factor of eight. On a short term basis, thermal power plant on the grid has to modulate more frequently than normal to compensate for what are rapid changes and so ensure that the total power input to the grid matches demand moment to moment. This is what is meant by 'balancing costs'.

- COM(2005) 627 confirms that there are significant balancing costs associated with the integration of intermittent wind energy but all other EU documentation concerning the emissions performance of wind-powered generation omits any information acknowledging the increased emissions associated with thermal plant's unavoidably operating less efficiently.

4.2 The position of the UK

The UK Energy Research Centre's Technology and Policy Assessment is a public authority in the sense of access for information legislation and was set up to inform decision-making processes and address key controversies in the energy field. Its 2006 report on the costs and impacts of intermittent generation on the UK grid was limited in scope as it contained no measured data but it did acknowledge that:

Wind turbines do not displace fossil generating capacity on a one-for-one basis. But it is unambiguously the case that wind energy can displace fossil fuel-based generation, reducing both fuel use and carbon dioxide emissions. Wind generation does mean that the output of fossil fuel-plant needs to be adjusted more frequently to cope with fluctuations in output. Some power stations will be operated below their maximum output to facilitate this, and extra system balancing reserves will be needed. Efficiency may be reduced as a result.⁵⁷

The degree to which efficiency may be reduced is a controversial topic but, despite advice to the UK authorities that fossil-fueled generating capacity is *not* displaced on a one-to-one basis, that is exactly what the UK claims in official documentation.

As noted, DECC failed to provide access to information about the assumptions underlying its computer modelling of wind-generated input, citing instead *Implementation of the EU's 2020 Renewable Target in the UK Electricity Sector: Renewable Support Schemes*. This does not document how the increased emissions from thermal power plant were assessed (if indeed they were) though it does have a lengthy section on increased balancing costs. However, it states at one point that:

It should be noted that determining exactly which [power] plant will provide these extra services was outside of the scope of this study; the balancing costs reported should be seen as approximate only.⁵⁸

This is a clear admission of a paucity or absence of the data needed to assess the situation reliably. As with the EU, the UK presents one kind of information to the public at large and another to a more technically-literate readership.

Finally, as noted in 2.2 above, providing a 'qualitative assessment' only (in other words, an opinion) of expected emissions cuts and fossil fuel savings was justified by the suggestion that the competent authority was not required to generate data where 'none already exists' and obliged only to 'include the information that may reasonably be required'. This clearly fails to comply with Article 7 of the Convention, which stipulates that the authorities are required to provide 'necessary information'. Given that they form the justification for the current rapid expansion in the UK's heavily-subsidised, wind-generated energy programme, that information must include the basis for claims made for emissions savings.

4.3 The position of the communicant

The communicant is not an engineer and can only look to engineering professionals who voice increasing concerns about the extent of wind-power already operational and planned for the future. The retired grid operations manager quoted above concluded his testimony by saying that:

⁵⁷ <http://www.ukerc.ac.uk/Downloads/PDF/06/0604Intermittency/0604IntermittencyReport.pdf>

⁵⁸ http://www.decc.gov.uk/assets/decc/Consultations/Renewable%20Energy%20Strategy%20Consultation/Related%20documents/1_20090501131408_e_@_EU2020TargetRenewableSupportSchemesv110.pdf – see page 85.

If there are minimal or no CO₂ emissions savings through the deployment of intermittent wind-turbines, which I believe is nearer the truth, then the vast sums of monies, in the many £billions per year that would be incurred and charged to the public, cannot be justified.

In similar vein, a submission from Sir Donald Miller, FEng, FRSE and chairman of SSEB/ScottishPower from 1982 to 1992, to the Energy and Climate Change Committee of the UK Parliament argued that:

The assumption that each MWh of electricity generated from wind saves the equivalent in CO₂ emissions from fossil fuel power stations would not be supported by any engineer with experience of operating power plant. The considerably lower efficiency of the back up thermal plant running at part loads together with the additional losses from frequent deloading and reloading as the wind strength varies, all consume additional fuel. The jury is still out on the exact implications of this but there is accumulating evidence from analysis of actual system operations both in the USA and more recently for the Irish Grid that high wind penetrations save little or negligible emissions of CO₂ and can in some circumstances actually lead to increases.⁵⁹

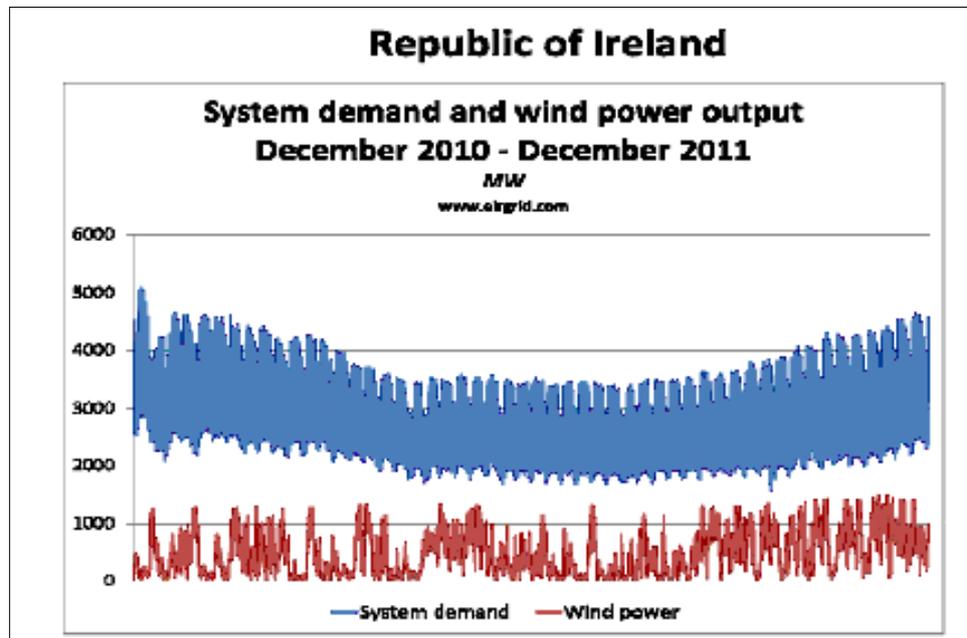
Miller's criticisms of the renewable energy strategy were shared by many with a technical background who contributed to the consultation. Several referred to the failure to provide verified emissions data and, in turn, to comply with the Århus Convention.

The engineering institutions submitted jointly to a Scottish Parliamentary Inquiry into the renewables programme in early 2012. Their presentation focused on the need to understand the effect that intermittent generation was having on the grid, on the extent of emissions cuts which would result from the deployment of renewable technologies and on the need for a quantitative assessment of the requisite balancing generation.⁶⁰

Contributors frequently referred to the situation in Ireland.⁶¹ The local power transmission operator, Eirgrid, publishes data that show wind-power's input to the grid sampled at 15 minute intervals.⁶² As an island with limited hydro-power capacity for balancing wind generation, it is possible to analyse the performance of thermal plant on the grid as input from wind-power input varies.

Eirgrid has also modelled emissions from thermal power plant based on theoretical loads, an exercise which, though less precise than measuring fuel consumption, provides useful data. Analysis of Eirgrid data shows that emissions start to rise when the input from wind power exceeds 1,200 MW.⁶³ The Republic of Ireland already has over 1,700 MW of installed wind power capacity and a NREAP calling for a total of 7,145 MW.

Figure 3:
Irish grid
performance,
December 2010 to
December 2011



⁵⁹ <http://www.publications.parliament.uk/pa/cm201213/cmselect/cmenergy/writew/517/m13.htm> The South of Scotland Electricity Board became ScottishPower in 1992.

⁶⁰ The Institution of Mechanical Engineers (IMechE), the Institution of Civil Engineers (ICE), the Institution of Engineering and Technology (IET) and the Institution of Engineers and Shipbuilders in Scotland (IESIS). http://www.scottish.parliament.uk/S4_EconomyEnergyandTourismCommittee/General%20Documents/INSTITUTION_OF_ENGINEERING_AND_TECHNOLOGY.pdf

⁶¹ See also the original Communication and Communication ACCC/C/2010/54.

⁶² <http://www.eirgrid.com/operations/>

Figure 4:
Emissions from fossil-fuelled power stations on the grid rise as the input from wind power rises.

Note that if EU and UK claims were correct, the graph would be a horizontal line – there would be no increase in fuel consumption (or emissions) as wind-generated input increases.

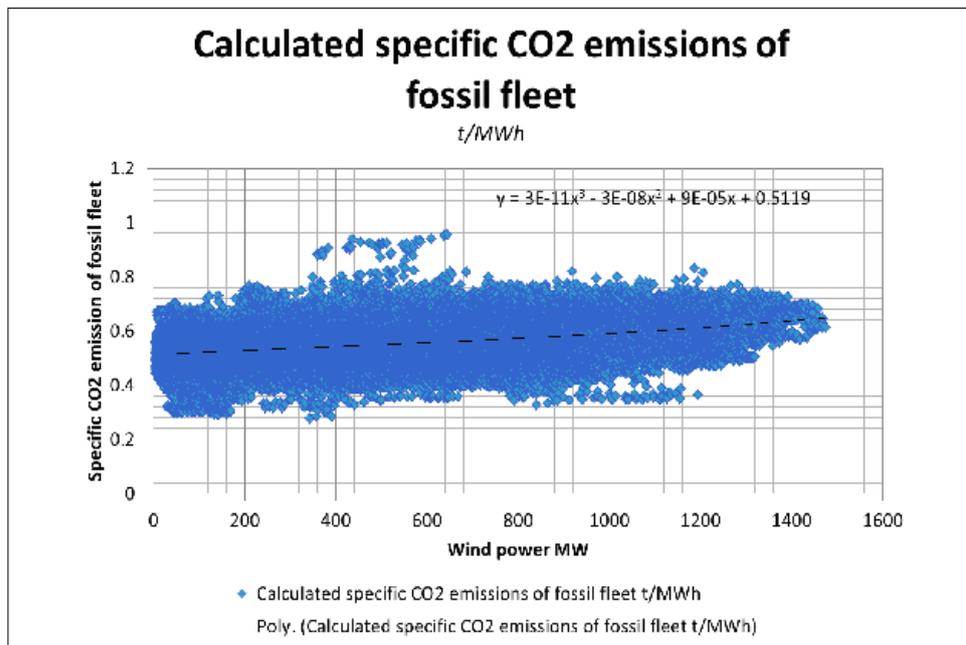
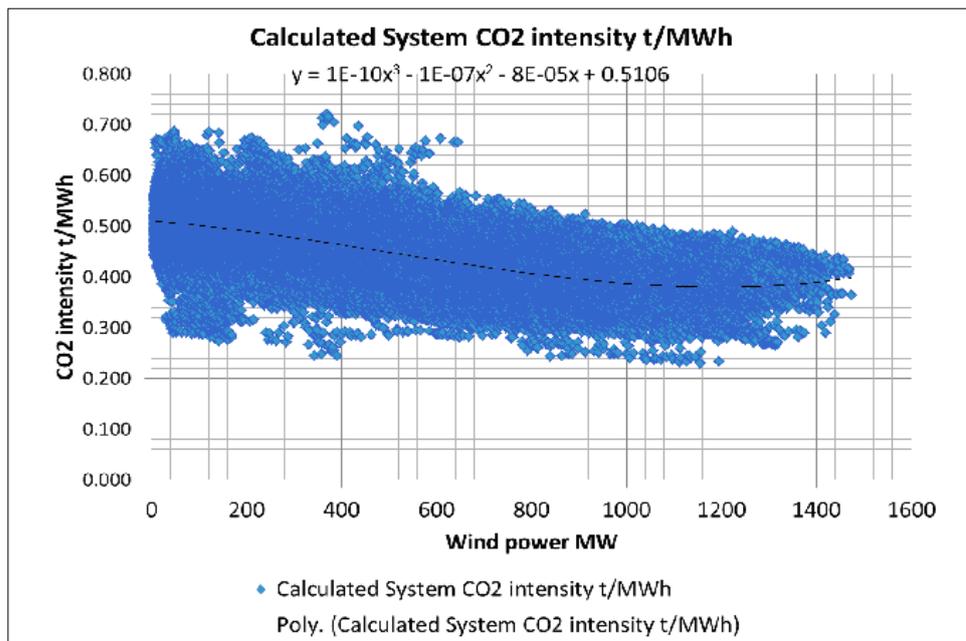


Figure 5:
Overall emissions intensity of the Irish grid as a function of the level of input from wind power. Note how emissions start to rise when wind power input exceeds 1,200 MW.

The graph is a cause for concern in that, if even a fraction of the wind-power capacity proposed by the Irish NREAP were to be installed, it would serve only to increase emissions.



In 2004, Eirgrid produced an report on the impact of wind power and its intermittency on the economics of operating conventional plant which concluded that:

The adverse effect of wind on thermal plant increases as the wind energy penetration rises. Plant operates less efficiently and with increasing volatility.⁶⁴

It recommended that the proposed wind power programme should not proceed, given that there were more cost-effective alternatives available for carbon abatement.

The Scottish Authorities issued formal documentation⁶⁵ in June 2012 on calculating the carbon savings from wind farms in relation both to sites built on peatlands and to grid-related emissions. It too relies on the counter-factual case, i.e. that a MWh of wind-generated energy displaces a MWh of conventional generation without penalty. It is presumably to be used as the basis for future planning approvals.

⁶³ The analyses was performed separately by Hugh Sharman and by Fred Udo, Holland.

⁶⁴ *Impact of Wind Power Generation in Ireland on the Operation of Conventional Plant and the Economic Implications*, p 36. <http://www.eirgrid.com/media/2004%20wind%20impact%20report%20%28for%20updated%202007%20report,%20see%20above%29.pdf>

Though the Irish authorities had the means to prepare a proper estimate for their NREAP progress report, they chose not to – they ignored both the report and other readily-available data when preparing publications and EU submissions. They have also refused to carry out the legally-required environmental assessments of their renewables programme.

⁶⁵ <http://www.scotland.gov.uk/Publications/2008/06/25114657/4>

4.4 Conclusion

Transparency means that the public can clearly follow the path of environmental information, understanding its origin, the criteria that govern its collection, holding and dissemination, and how it can be obtained.

The Aarhus Convention: An Implementation Guide, page 71

There is an absence of transparency over claimed emissions savings. In light of the scale of the costs and environmental impacts that the wind-power programme is set to incur and given that they can only be justified by the purported savings in fuel and cuts in emissions, it is an absence that manifestly breaches the rights that the Convention accords citizens to access environmental information and participate in the decision-making process.

The EU and the UK have been escalating their promotion of wind power for well over a decade: it is unacceptable that there are still no verified emissions data to support the programme's rationale – and no plans to obtain any. Strategic Environmental Assessments at the UK⁶⁶ and Scottish levels persist in presenting nothing more than opinions based on the absurdity that displacement is 100 per cent efficient. They contradict the stance of engineering professionals (not to mention the laws of physics) and, critically in the context, the position that both Parties take in financial assessments. The causes and implications of the reduced efficiencies associated with integrating wind-power and existing thermal plant are discussed in detail in these reports.

The effect is that one notion is presented to the public at large (which in this instance includes policymakers and those charged with determining planning applications for projects driven by the programme) and another, which explicitly eschews the notion that 'greenhouse gas emissions, including CO₂ emissions, from renewable energy sources are either low or zero', to a smaller but more technically informed milieu.

For obvious reasons, the latter is better able to look below the surface of the arguments and 'clearly follow the path of environmental information' than the wider public. The latter, for all practical purposes, has been and continues to be denied access to critical data.

Therein lies the breach of Articles 5 and 7 of the Convention.

⁶⁶ *Energy Policy Environmental Report AoS EN-1* referred to in the Communication.

Question 4

Please update the Committee on the status of the domestic remedies that are mentioned on page 9 of the communication.

The domestic remedies mentioned are (1) the complaint process with the Information Commissioner, (2) the complaint to DEFRA and (3) the complaint with the EU Commissioner CHAP(2010) 02125.

The complaint process with the Information Commissioner

The Information Commissioner reported that his '... remit is solely to establish whether the Environmental Information Regulations have been correctly followed'. The matter was left there.

However, the Scottish Government has published its so-called *Strategic Environmental Assessment into its Electricity Generating Policy Statement and Renewable Energy Routemap 2020*. The consultation closed in June 2012. The SEA has been subject to widespread criticism in that it appears not to fulfil the requirements of the relevant EU Directive. A condensed critique of the SEA is attached, which the communicant adopts as her own for the sake of brevity (Attachment 8).

Note: The remit of the Information Commissioner is to promote good practice among public authorities in relation to the Environmental Information (Scotland) Regulations 2004.

The complaint to DEFRA

As discussed on page 11, DEFRA referred the question on to DECC which responded in its answer to Q3 to the communicant. The UK Ombudsman, who can only respond to a complaint from a Member of Parliament, was contacted in July 2012. The communicant awaits a response.

The complaint to the EU Commissioner CHAP (2010) 02125

As discussed on page 12, this was closed by Jean-Francois Brakeland on 22 March 2012. His action has since lead to Complaint 813/2012/KM to the EU Ombudsman.

Access to Justice provisions in Scotland have not changed, except to say that in the cases of *McGinty* [2010] CSOH 5, and *Road Sense and Walton* [2011] CSOH 10, the use of Protective and Restricted Expenses Orders have become better and more completely understood.

Question 2 to the Parties

Were any public consultations conducted in issuing the planning permission for the Carriag Gheal wind farm? If public consultations were conducted, please provide the Committee with relevant information.

The communicant has already raised the limitations with regard to the public participation on this project in the original communication.

Question 3 to the Parties

Please provide the Committee with relevant information that indicates how the access road to the Carriag Gheal wind farm comes within the purview of the Convention. Were decisions regarding the access road subject to public consultations in accordance with national law?

The linked access West Loch Awe Timber Haul Route (WLATHR) is a road and therefore falls under Annex II 10 (e) to Directive 85/337/EEC as amended on Environmental Impact Assessment.

As an environmental impact assessment procedure was completed for this project, it falls under Annex I (20) of the Convention.