

From: Pat Swords  
To: aarhus compliance <aarhus.compliance@unece.org>  
Date: 26/02/2018 22:51  
Subject: Re: Invitation to take part in an open session on request ACCC/M/2017/3 (European Union) during the Committee's 60th meeting (Geneva, 12-16 March 2018)

Dear Fiona

I will make arrangements to dial in on the 12th March. However, in advance of this I would like to raise the following issue with yourselves in the Secretariat and the Compliance Committee. There has still been no written reply to the Committee's Second Progress Review of Decision V/9g of February 2017 in which in point 74(b):

- *With respect to the final sentence of paragraph 3 of decision V/9g concerning the evaluation of the NREAPs, to:*
- *(ii) Explain, for each member State whose information on their implementation of article 7 was either insufficient or revealed a possible failure to carry out public participation that fully met the requirements of article 7, the specific measures it proposes to take with respect to that member State.*

Clearly Ireland is an important Member State in this regard given the special emphasis of Communication C-54 and Decision V/9g. Therefore, I would like to point out to you the EU Ombudsman's "Decision in case 1689/2016/MDC on the Commission's failure to reply in a satisfactory manner to an infringement complaint against Ireland":

- <https://www.ombudsman.europa.eu/en/cases/decision.faces/en/74989/html.bookmark>
- *7. In the Commission's reply of 26 April 2016 (hereinafter the 'Commission's second reply'), the institution stated that it was in the process of holding discussions with the Irish Government about its plans for wind energy development at the national level. It went on to state that the Commission had considered in some detail Ireland's National Renewable Energy Action Plan, prepared under the Renewable Energy Directive. Whilst no formal SEA had been carried out for this plan, the Commission concluded that there was no reason to believe that insufficient public participation had taken place prior to its adoption.*
- *8. The Commission pointed out that it enjoys wide discretion in deciding whether to bring enforcement proceedings. It added that it is under no duty to bring such proceedings and that they do not automatically follow from every complaint.*

There was no progress on Decision V/9g over the three years from the 2014 Meeting of the Parties. Indeed I consider the statements made by the EU to the Meeting of the Parties in September 2017, i.e. that it "reaffirmed its commitment to implement decision V/9g" to be in direct variance to its actual behaviour in EU internal legal compliance proceedings above and also as a result to have been made in bad faith.

Regards  
Pat