

- To the Aarhus Convention Compliance Committee
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- Secretary to the Aarhus Convention Compliance Committee
- United Nations Economic Commission for Europe
- Environment Division
- Palais des Nations
- CH-1211 Geneva 10, Switzerland
- E-mail: aarhus.compliance@un.org

Subject: Communication to the Aarhus Convention Compliance Committee regarding the Laois-Kilkenny Reinforcement Project.

Case Number ACCC/C/2015/132

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• **I. Information on correspondent submitting the communication**

• This submission is made both on behalf of the RTS Substation Action Group and in a personal capacity as a member of the public directly affected by the issues outlined within this submission.

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• Name: RTS Substation Action Group

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• **II. Party concerned**

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• Ireland

IV. Project update

The following is a short and partial update on this project since we submitted our original complaint to the Aarhus Compliance Committee. As you can see, the issues are ongoing.

- In early 2017, the developer commenced development on the project in breach of their planning permission. The RTS Group submitted a complaint to the Local Authority and eventually enforcement action was taken requiring the works to be removed.¹ Part of the works undertaken were not even part of the original planning permission.
- While we were awaiting enforcement action by the Local Planning Authority, the Developer, EirGrid, applied to An Board Pleanála (ABP) for an amendment to their planning permission. Our legal advice was that such an amendment was not possible due to the nature of the project and the nature of the planning breach. Accordingly, we sought to advise ABP of the matter and participate in this decision to alter the planning permission. Twice ABP refused to accept our submissions (10th July 2017 and 24th July 2017) and granted the amendment to the planning permission without our involvement.²
- On 27th June 2017 our local public representatives raised the planning breach and proposed planning amendment in the Dáil (the Irish parliament). Some of the statements made to the Dáil regarding project mentioned “*the planning process on this project is in tatters*”, and regarding EirGrid’s planning amendment, “*Everything about its submission is dishonest and fraudulent. It must withdraw from site unilaterally, completely and forever*”.³
- Eventually, the works which had commenced had to be removed and the site restored.
- As a result of a commitment sought during the Dáil debate, on 18th January 2018, we gave a presentation to the Minister for Energy (D. Naughten) and Minister for Justice Charlie Flanagan (one of our local public representatives) to explain the ongoing issues regarding this project. The energy Minister gave an undertaking that his department would investigate our claims.
- The ‘Investigation’ by the Department turned out to be a meaningless endeavor.
- Left with no other options, our community commenced a protest at the entrance to the substation site for approx. 600 days to protect our water and our environment from both Eirgrid and ESB’s behaviour.
- In the meantime, our Group have met with the CEO’s of both EirGrid and ESB as well as the senior technical team from EirGrid to no avail.
- The latest attempt to gloss over the fatal flaws in the planning process is the introduction of Irish Rural Link under the guise of an ‘independent body’ when in reality, they were selected by and are employed by ESB/EirGrid.
- In conclusion:
 - No community should ever have to go through this. We are now 12 years into this project and we have faced an uphill battle against the Irish State every step of the way.
 - RTS Action Group still maintain that the planning assessments are flawed in a multitude of ways, only some of which are highlighted in this submission, and were not carried out or recorded properly.
 - This project has become a swamp of endless planning applications with planning documentation scattered across multiple digital platforms and sometimes none.

¹ <https://www.laoistoday.ie/2017/06/12/anger-eirgrid-sub-station-works-begin-planning-conditions-met/>

² PL11 .VM0012 <http://www1.pleanala.ie/casenum/VM0012.htm>

³ <https://www.oireachtas.ie/en/debates/debate/dail/2017-06-27/29/>

V. Provisions of the Convention alleged to be in non-compliance incl. evidence

Non-compliance with Article 5 1(a) of the Aarhus convention

“Each Party shall ensure that: (a) Public authorities possess and update environmental information which is relevant to their functions”

This section sets out to demonstrate that the GRID25 plan is inherently linked with the development of the Gate 3 National renewable (predominantly wind) plan. They are both electricity related sub-projects of Ireland’s NREAP and should have been subject to Strategic Environmental assessment to establish cumulative impacts, as the wind farms require the grid capacity in order to be able to connect to the electrical system. The absence of this cumulative assessment is a breach of the SEA Directive and the Aarhus convention in that, environmental impacts were not assessed prior to adopting the plan (additionally a breach of the Habitats Directive) and there was no appropriate public participation in environmental decision making.

The Irish State should have ensured that these assessments are available to inform planning decisions for lower tier projects such as that for the Laois-Kikenny reinforcement project.

Had the Gate 3 decision not been taken or had not relied so heavily on intermittent generation, it is possible that such widespread Grid reinforcements would not have been required. As the combined environmental assessment was not done and therefore the environmental assessment for the plan is not available, we submit that this is a breach of Article 5.1 of the Aarhus convention.

1. In findings to ACCC/C/2010/54 ⁴ “75. *The Committee finds that Ireland’s NREAP constitutes a plan or programme relating to the environment subject to article 7 of the Convention because it sets the framework for activities by which Ireland aims to enhance the use of renewable energy in order to reduce greenhouse gas emissions, based on Directive 2009/28/EC.*”

2. Quotes taken from the NREAP:

“The National Renewable Energy Action Plan (NREAP) sets out the Government’s strategic approach and concrete measures to deliver on Ireland’s 16% target under Directive 2009/28/EC”

page 5 *“The Government has set a target of 40% electricity consumption from renewable sources by 2020.”* And *“All key national entities, including the Energy Regulator, the distribution and transmission system operators and the renewable energy sector are working with the Government to deliver the 2020 target through grid connection and grid development strategies.”*

⁴ http://www.unece.org/fileadmin/DAM/env/pp/compliance/C2010-54/Findings/ece_mp.pp_c.1_2012_12_eng.pdf

3. Sub-plans under Ireland's NREAP regarding electricity relevant to this complaint: i.e.

| Name and reference of the measure | Type of measure | Expected result | Targeted group and or activity | Existing or planned | Start and end dates of the measure |
|--|-----------------|--|--------------------------------|--|------------------------------------|
| 10. Rollout and implementation of Gate 3 renewable generation grid connection offers | Soft | Under Gate 3, 3900MW of renewable generation are receiving grid connection offers over 18 months from December 2009. The rollout and implementation of Gate 3 by the regulator, TSO and DSO will ensure that Ireland can reach its 40% RES-E target. | Generators of RES-E | Existing and planned. It is noted that constraint reports included in connection offers may need to be adjusted following a decision on the consultation on Principles of Dispatch and the Design of the market schedule in the Trading & Settlement Code. | December 2009 onwards |

| Name and reference of the measure | Type of measure | Expected result | Targeted group and or activity | Existing or planned | Start and end dates of the measure |
|-----------------------------------|-----------------------------|--|--------------------------------|--|------------------------------------|
| 11. Rollout of Grid 25 strategy | Financial / Infrastructural | Grid 25 provides the framework to build a more cost effective and efficient system to cater for the integration of increasing amounts of renewable generation and will necessitate €4 billion investment in the grid. An SEA will be carried out on the implementation programme for Grid25. | Generators of RES-E | Existing and planned (Grid 25 is in the implementation and rollout phase.) | 2008 onwards |

Futureproofing for Exports:

"4.7.3. Estimated potential for joint projects (a) In which sectors can you offer renewable energy use development in your territory for the purpose of joint projects? Ireland has significant offshore resources which hold electricity export potential and could potentially be the subject of joint projects depending on negotiations with other Member States. Apart from this, subject to negotiation Ireland is open to joint projects in general across any renewable energy technologies." And

page 7 "We are working to create the economic, infrastructural and planning conditions conducive to the sustainable development of all of Ireland's renewable energy resources, which offer the potential for Ireland to become a significant exporter of renewable energy over the coming decades. The Government will continue to work with the European Commission and other Member States to realise Europe's ambitions for renewable energy, both onshore and offshore."

4. The Gate 3 'Renewable Generator' Offers is sub-item 10 in Ireland's NREAP i.e. required by the NREAP to ensure that Ireland reaches its 40% Renewable electricity target primarily via wind energy. The plan was adopted by the by the Commission for Energy Regulation, as they were named at that time, (a national authority) who issued a direction under its own statutory power to the electricity grid operator and asset owner (CER Decision CER/08/260⁵).

⁵ CER/08/260 Gate 3 <https://www.cru.ie/wp-content/uploads/2008/07/cer08260.pdf>

5. GRID25 is 'The Grid Development Strategy (GDS)' option referred to in CER decision CER/08/260 which described it as "*This is EirGrid's forward-looking transmission development strategy which plans the development of the transmission system now to cater for anticipated requirements for the long-term, i.e. for 2025, as requested in the Government's White Paper on energy. It is considered to be the option that best meets the Commission's guiding objectives for Gate 3*".
6. At the time of application for planning permission for the Laois-Kilkenny Reinforcement project, an SEA had been carried out by EirGrid for the Implementation of GRID25 in the period 2011-2016⁶. i.e. only the first phase of the rollout of grid reinforcements. This SEA Environmental Report explains:
Page 6 "*Grid25 has been prepared to contribute towards the achievement of the 40% renewable energy target and the actions outlined in the Government White Paper.*"

However, Page 86 discusses indirect and cumulative impacts stating "*There is also no spatially specific National Wind/Renewable Energy Strategy, nor is there any SEA of such policy objectives. It is the sequence of policy assessment that facilitates the assessment of cumulative effects. The absence of these other relevant plans that create context (and their associated assessments) renders it premature – and therefore impractical – to make any meaningful assessment of cumulative effects between high level and national plans or policies.*"

As such, there is and was no cumulative assessment of wind and grid projects.
The Laois-Kilkenny reinforcement project number CP0585 is listed on page 119.

7. Correspondence between the Department of Environment, Heritage and Local Government (DAHG) and EirGrid relating to scoping of environmental assessment for GRID25 shows that the Department also had the view that the combined effects of wind energy and grid development needed to be assessed from an environmental perspective at strategic level, stating:
"*In terms of development, the two main elements of the Implementation Programme are the upgrading of existing circuits and the creation of new circuits. Both are required to transport power across a meshed network between generator locations and demand centres, and both are responding to, and will determine the locations of renewable energy projects, particularly, at present, wind energy projects in onshore locations. In this regard, the Natura Impact Statement and SEA Environmental Report both fail to address and assess the wider likely significant effects at a strategic level.*"

And so, it is recognized that location of grid capacity is inherently linked with locations wind/renewable energy projects and that these combine to create likely significant effects.

8. Finally, Ireland's Energy minister at the time (March 2013) made it clear that
"*Ireland's overarching objective is not just to make renewable energy an increasingly significant component of our domestic electricity supply by 2020, but to make it a significant component of our export sector,*" he said⁷.

⁶ <https://www.eirgridgroup.com/site-files/library/EirGrid/Environmental-Report-for-the-Grid25-Implementation-Programme-2011-2016-Strategic-Environmental-Assessment.pdf>

⁷ <https://www.windpowermonthly.com/article/1176400/ireland-extends-key-renewables-programme>

Non-compliance with Article 6.4 of the Aarhus convention

Aarhus convention Article 6.4 requires that “*Each Party shall provide for early public participation, when all options are open and effective public participation can take place.*”

This section sets out to demonstrate that the Laois-Kilkenny Reinforcement project merely gave the **illusion of opportunity for public involvement** and that in reality, there was no room for effective public participation in this project. We submit that the extensive and significant degree of background decision-making, ‘future-proofing’ (most of which was not disclosed to the public) places the project in breach of Article 6.4 of the Aarhus convention and is compounded by higher tier decision-making which was also in breach of this aspect of the convention.

The Laois-Kilkenny Reinforcement Project was a fait accomplis from the outset:

1. Week commencing **26th October 2009**, the Semi-State developer, Eirgrid placed the first public notice for the project in local newspapers [**Annex 1 - Ref 001**]⁸ stating:

“Demand in the greater Kilkenny area has placed continuing pressure on the transmission network with the result that the existing 110 kV network is approaching its technical limit and additional reinforcement is now required.

The proposed new transmission infrastructure will consist of the following:

- A 400/110 kV substation situated to the south east of Portlaoise. **Location to be determined.**
- A 110 kV substation located adjacent to the existing 38 kV electricity substation at Ballyragget, County Kilkenny.
- A 110 kV circuit between the proposed 400/110 kV substation and the proposed 110 kV substation

*This stage in the planning process is to identify any existing constraints within the study area that could affect route selection. This will result in a ‘Constraints Map’. We are now seeking public input into this stage by way of comments, information, submissions or queries. **The input into the constraints map will allow us to proceed to the next stage in the process which is to identify potential route corridors within the study area.**”*

(Emphasis added)

The above description gives the impression of the commencement of a relatively benign project to provide only one extra power line (circuit) on timber poles with a substation for connection at either end and with the Laois substation location supposedly yet to be decided. The true scale or nature of the project was not identified in this notice, nor the decisions already made or huge capacity for expansion which had already been defined.

The only role for the public was to contribute to an environmental constraints map thus reducing public input to mere mitigation at best from the outset, although as will be seen, not even that was possible as due account was not taken of our submissions.

However, the next points will show that while the public were being invited to assist in the process to identify potential route corridors, these had actually already been determined, mapped and presented by the State owned developer to both An Bord Pleanála and Laois County Council for comment. This project was a fait accomplis.

⁸ <https://www.eirgridgroup.com/site-files/library/EirGrid/Appendix%20F-1%20Newspaper%20Notice%201%20-%20Oct%202009.pdf>

2. Local concern over this proposed project prompted further investigation by the community and the following information was found demonstrating that the large substation to be sited in Laois was going to have significant spare connection capacity...the question had to be asked, 'what for?'

Eirgrid's Transmission Development Plan 2008 - 2012⁹ was published in July 2009 [Annex 5 - slide 5]. The Laois - Kilkenny reinforcement project is listed as project CP585. In identifying the project, the report, which predates the first public notice indicates that the project was already sufficiently advanced to estimate the 'Major New Equipment' associated with the project as follows:

- 400kV station
- 400kV bays: 6
- 110 kV bays: 7
- 400/110 kV 250 MVA
- Trf: 2
- 110 kV station:
- 110 kV bays: 4
- In other 110 kV station:
- 110 kV bays: 1
- 110 kV OHL: 30 km

The expansion capacity and future plans for this new grid infrastructure is relevant, as, while there are some existing powerlines in the area, there is currently no substation in this agricultural area which would allow easy electrical connection of other industrial projects / electrical infrastructure / power lines.

Granting permission for this development would create a new large scale grid connection point in Laois with spare capacity. This would inevitably lead to further and likely large scale industrial development in an agricultural area directly facilitated by the project. It simply did not make sense to us that the National Transmission Developer, EirGrid would include so much spare capacity without at least some idea of what it was to be used for and so we attempted to gain information on what was planned for our area.

If other projects / transmission reinforcements were being planned based on the existence of this project as a starting point, it would mean that arguments presented by us against it would likely have little effect on the decision-making.

3. Europe knew long before we did that a project was proposed for our area as the project was published on a European wide map for electrical infrastructure which predated the first local public notice. [Annex 5 – slide 3].

Our research discovered an ENTSO-E¹⁰ map displaying 'a forward-looking proposal for electricity transmission infrastructure investments across 34 European countries'. (ENTSO-E = European Network of Transmission System Operators; Eirgrid are listed as the only ENTSOE Member for Ireland). The map was dated 01.07.2009 The Laois - Kilkenny reinforcement project is clearly identified as European project reference 465 on the corresponding table of projects envisaged in the timescale 2010-2014, with the project specifics already defined. i.e.

- The project characteristics outline a new 110kV line from Loughteeog to Ballyragget and the connecting substations and transformer requirements.

⁹ <https://www.yumpu.com/en/document/read/47826159/transmission-development-plan-2008-2012-eirgrid>

¹⁰ <https://www.entsoe.eu/about/inside-entsoe/members/>

Given that this is a Europe wide map, it must have been in preparation for some time prior to the published date of July 2009.

European project no 469 was also identified on these European maps for the follow-on period 2015-2020 'to facilitate the evacuation of generation from the south-West region'. **[Annex 5 – slide 3-map on right hand side with note 'Note line from Cork also']**

It will be shown that this connection to the Cork area is also significant.

4. In fact, prior to any public notification, the Laois substation site had already been selected and routes had been planned based on that location. An Bord Pleanála, the planning decision-maker had been informed.

On 5th August 2009, Eirgrid (the applicant) attended a pre-consultation meeting with An Bord Pleanála, this was prior to any public notification of the project. This is a consultation between the planning authority and the developer only. While a record is kept of the pre-consultation meetings, these are only made publicly available once the consultations are concluded. In this case, the pre-consultation phase continued into November 2012 ¹¹.

The minutes of that meeting were eventually published **[Annex 6]**. The presentation made at that meeting **[Annex 1-Ref 002]** and the preliminary route map presented **[Annex 2]** were not published. However, these three documents further demonstrate that the project work and decisions were advanced and had already progressed to the stage where routes had been selected, constraints reports were underway and a preferred route would be known around the time of the first public notice. Obviously, to be in the position to prepare routes, the start and end points of the project were already known. The Inspectors report **[Annex 4]** - page 57, records that additional substation study areas were 'assessed'. However, it soon became obvious to the community that 'alternative locations' were all in this specific locality and so the cumulative impacts would accrue here even if another location was progressed. Based on local knowledge, it was generally understood that, the site for the large substation at Coolnabacca in Laois had been agreed with the landowner and so, in reality, there were no other real alternatives.

The extracts from the 5th August presentation support this, confirming that the station site identification was scheduled for July/August 2009 **[Annex 1-Ref 002]** i.e. prior to the first public notification.

The annotated minutes of the meeting **[Annex 6]** explained that:

"a desktop study has been carried out on a number of route options. Six route options involving over-ground cables and three route options involving underground cables have been identified."

"the prospective applicant is currently working on an environmental constraints report in relation to each of the identified route options".

*"It was stated that the proposed stations will be designed to facilitate other networks, both renewable and non-renewable power sources**"*

The ** annotated text by the developer regarding the purpose of the project is also of relevance here, it stated:

"The proposed new stations will be designed with some degree of spare capacity (spare Line bays) for new connections in so far as is practical. This will facilitate future grid connections if they are required" and "Strengthening the network in the region by

¹¹ <http://www.pleanala.ie/documents/details/VC0/OVC0035.pdf>

constructing new circuit (110kV) will increase the capacity of the transmission system in the region....so the project will therefore facilitate integration of renewables onto the grid."

The developer presented a route map at the meeting which predated the first public notice-see **[Annex 2]** –

Project: "Loughteeog 400/110kV Project"
Drawing title Preliminary route selection"
Drawing Number: PE687-D261-002-001-001
Date: 21.07.2009

Note that routes A, B, C, D and E shown on the map all converge, not merely on the red circle for the 400kV substation 'study area', but on the exact location of the site that was eventually published for the Laois, Coolnabacca substation. Please refer to **[Annex 1-Ref 004]** for a direct comparison demonstrating this.

5. Laois County Council were also asked to comment on the routes in a letter pre-dating the first public notification. In a letter dated 26/08/2009, **[Annex 1-Ref 005]** ESBI wrote to Laois County Council. This initial consultation explained that the proposed project involved construction of a new 400/110kV electricity substation near Loughteeog, Portlaoise, Co. Laois (emphasis added) and a new 110kV transmission circuit between Ballyragget and Loughteeog. The document refers to an attached A3 map explaining that this is:

"a Preliminary Route Selection Map and shows preliminary potential route corridors for both overhead line and underground cable options".

The correspondence concluded by asking the council to comment on the initial route corridors as follows:

"We would now also welcome your comments on the initial route corridors also attached"

6. In 2015, through AIE requests, we discovered that securing a site for the large Laois substation early was an intentional risk management strategy by the developer from the outset. See extract from EirGrid internal Approval report dated 5th March 2008. **[Annex 1-Ref 003]** which identified

"Route/Site Acquisition; Risk: That a site for a substation in the required location or a route for the overhead line is impossible to achieve.

Mitigation: EirGrid will at the earliest possible stage identify and procure a substation site."

It is also worth noting that this report also considered alternative reinforcement options in other counties but discarded them in favour of the Laois-Kilkenny project on the basis that *"This option is the preferred solution as it is regarded as being the optimum transmission reinforcement with the least impact on the environment and the lowest cost long term option with the shortest delivery time."* This constituted environmental decision-making which excluded the public concerned but resulted in the elimination of alternatives to significant infrastructure in our locality. Part of EirGrid's reasoning for discarding the other 'alternatives' was that both would be likely to be *'more contentious'* than the preferred solution in our locality.

Further more, the document also references a study from January 2008 confirming that site assessments for the Large Laois substation had already taken place at that stage, that route corridors had already been developed and verified with on-site investigations and indeed, that a route from Laois to yet another substation (Lisheen 110kV station) had been examined.

The preferred solution i.e. the Laois substation and lines was formalised internally by EirGrid when, on 16th April 2008 an application was made to the EirGrid Board to proceed with 'a new 400/110kV station, Loughteelog, located near Portlaoise and associated 110kV work (CP0585).' Effectively leaving all other alternatives behind at this stage.

7. The developer also ensured that the Laois substation could be used for connection of HVDC (High Voltage Direct Current). We researched and found the following published study dated 18th October 2009 which predated the first public notice: "*Investigating the Impact of HVdc Schemes in the Irish Transmission Network*"¹² and presented our findings to the planning oral hearing [**Annex 5 – slides 5 and 6**]. This was a 200page detailed technical study which examined 5 scenarios on the Island of Ireland. As mapped on page 124 in that document, 'Scenario four: drawing power out of Cork' is of direct relevance to our project as it describes the feasibility of bringing a High Voltage Direct Current (HVDC) line from Cork specifically to the small townland of Loughteelog. If progressed, this would require an additional massive HVDC substation for connection. The 'alternative' solutions to the Laois-Kilkenny project did not feature in this report demonstrating that the alternatives had been left behind at that stage.

Extracts from the report [**Annex 1-Ref 006**] show that the power studies were based on Ireland's target to reach 40% gross electricity from renewables and high wind generation conditions. Scenario 4, the Laois project, was based on Max. wind in Southwest and export of energy to Wales and Scotland.

Via a request for information in 2017, we established that these scenarios were defined at a workshop held at the EirGrid offices in Sept/October 2008. i.e. long before any public notice was published.

8. We found an industry presentation made by Mark Norton of Eirgrid in October 2010 and we presented extracts to the oral hearing to demonstrate planned future connections [**Annex 5-slides 7, 8, 9, 10 and 11**]. His presentation also makes reference to the HVDC line route as set out in the aforementioned HVDC study. Once again, the HVDC route (purple line) terminating at Loughteelog is clearly visible in a map for 'Planned Transmission System As at 2020'. However, in addition to the HVDC connection, a further 2 No. 110kV lines and an additional 400kV line appear connecting into the Loughteelog area. It is clear that Eirgrid had already developed medium term plans for further connections that would interact directly with the Laois - Kilkenny reinforcement project.
9. In January 2013¹³ EirGrid concluded a joint study with UK National Grid showing how the huge Midlands wind energy export projects e.g. Greenwire etc. could connect to the Irish and UK transmission systems [**Annex 7**]. In 2017, via a request for information we obtained a copy of the full report. The report examined 4 connection options in detail (only 4 on the entire Island of Ireland!) and stated that "*The most appropriate sites for connection would be selected and these sites would be made available to all eligible developers...*". One of the four locations examined was the planned new substation in Laois. The 'alternative' solutions to the Laois-Kilkenny project did not feature in this report demonstrating that the alternatives had been left behind.
10. Points 1-9 above demonstrate clearly that the main substation location, proposed line routes, extra development capacity and potential connection of further projects had already

¹²HVDC

[http://www.pleanala.ie/misc/PCI/PCI1/DAF2/2.0%20Missing%20Information/3.0%20Requested%20Reference%20Docs/7.0%20TransGrid%20Solutions%20Inc%20\(2009\)%20Investigating%20the%20Impact%20of%20HVDC%20Schemes.pdf](http://www.pleanala.ie/misc/PCI/PCI1/DAF2/2.0%20Missing%20Information/3.0%20Requested%20Reference%20Docs/7.0%20TransGrid%20Solutions%20Inc%20(2009)%20Investigating%20the%20Impact%20of%20HVDC%20Schemes.pdf)

¹³ "Connecting Wind Generation in Ireland to the Transmission Systems of Great Britain and Ireland" Joint Study by EirGrid & UK National Grid, February 2013

been defined and communicated in various manners to Europe, the local planning authority and the decision-maker for this project prior to any public engagement. Indeed, the developer, as a State body is also an environmental decision-maker in their own right and they had also taken significant internal decisions regarding the approach to this project both prior to any public notification and during the 'consultation' period albeit, totally independently of any real public participation. It has taken extraordinary amounts of time and effort though community research to unearth some of this information.

11. How can you participate effectively in Decision-making if you are never told what the project is really for? From the outset, we have been concerned by the environmentally vulnerable location atop a regionally important aquifer as well as excess capacity and impending industrialization of our area facilitated by the project and we consistently asked for information on the future use of the Laois substation/project. e.g. **[Annex 5 – slides 25 and 26]** are extracts from various newspaper articles in 2010 /2013, showing the answer - 'futureproofing' was a regular response. It has become clear to us that this project is the starting point for largescale industrialization of our area and that, there was no room for effective public participation in this project.
12. Finally, the first submission of this complaint to the Aarhus Compliance Committee explained that while the specific Laois-Kilkenny Reinforcement project is the focus of our complaint, higher tier environmental decision making which was involved in setting the framework for this project had already taken place in the absence of public participation and in the absence of SEA/AA which further compounds the breach of Article 6.4 of the convention i.e. The Laois-Kilkenny reinforcement project is a subproject of GRID25¹⁴ which in turn is a key part of Ireland's NREAP (see GRID25 page 37 - "*Key developments By 2025, the demand in the Midlands region is expected to grow by over 40%. It is expected to have up to 160 MW of wind energy. Grid development in the region will include: ■ An additional investment of approximately €310m through upgrading 225 km of transmission network and new circuit build; ■ Tapping in to the existing 400 kV line to strengthen the 110 kV network around Portlaoise providing capacity to supply the continuing strong growth in Kildare and Laois.*") Emphasis added.

Ireland's NREAP which links together renewable energy targets, the Gate 3 wind farms, the export of renewable energy and the GRID25 infrastructure to facilitate this is directly referenced in the findings in Aarhus case ACCC/C/2010/54 ¹⁵ :

"85. Based on the above considerations, the Committee finds that the Party concerned does not have in place a proper regulatory framework and/or other instructions to ensure implementation of article 7 of the Convention by its member States, including Ireland, with respect to the adoption of NREAPs. The Committee also finds that the Party concerned, in practice, by way of its monitoring responsibility, failed to ensure proper implementation of article 7 of the Convention by Ireland with respect to the adoption of its NREAP. The Committee thus finds that the Party concerned in both these respects is in non-compliance with article 7 of the Convention."

"Main findings with regard to non-compliance

97. The Committee finds that the Party concerned:

... (b) By not having properly monitored the implementation by Ireland of article 7 of the Convention in the adoption of Ireland's NREAP has also failed to comply with article 7 of the Convention (para. 85);...

And recommending at paragraph 98 that:

¹⁴ GRID25 -

[http://www.pleanala.ie/misc/PCI/PCI1/DAF2/Volume%203B/Reference%20Material/EirGrid%20\(2008\)%20Grid25%20Strategy.pdf](http://www.pleanala.ie/misc/PCI/PCI1/DAF2/Volume%203B/Reference%20Material/EirGrid%20(2008)%20Grid25%20Strategy.pdf)

¹⁵ ACCC/C/2010/54 - findings against EU regarding adoption of NREAPS

https://unece.org/DAM/env/pp/compliance/C2010-54/Findings/ece_mp.pp_c.1_2012_12_eng.pdf

“..... the Party concerned adopt a proper regulatory framework and/or clear instructions for implementing article 7 of the Convention with respect to the adoption of NREAPs. This would entail that the Party concerned ensure that the arrangements for public participation in one of its member States are transparent and fair and that within those arrangements the necessary information is provided to the public. In addition, such a regulatory framework and/or clear instructions must ensure that the requirements of article 6, paragraphs 3, 4 and 8, of the Convention are met, including reasonable time frames, allowing sufficient time for informing the public and for the public to prepare and participate effectively, allowing for early public participation when all options are open, and ensuring that due account is taken of the outcome of the public participation. Moreover, the Party concerned must adapt the manner in which it evaluates NREAPs, accordingly.”

13. As has been demonstrated, while the State developer set out to give the public the impression that the project was only just commencing and was merely for the connection of one additional 110kV power line, in reality, key decisions had been made to discard alternatives and extensive studies had been undertaken for many other potential future connections to this specific location in the absence of any public involvement. While these decisions may not be ‘permitting’ decisions, they do represent the decisions of a significant State body who have their own environmental decision-making responsibilities as demonstrated by the fact that they are responsible for conducting the GRID25 SEA.
14. In effect, we, ‘the public concerned’ were really only being informed of what was planned for our area, or partly informed as the next sections will show. How could anyone believe that a project which already had this extensive amount of background technical studies completed in the absence of public involvement would be open to changes? We submit that the Laois-Kilkenny reinforcement project has been a fait accompli since the beginning having been so far progressed and so thoroughly investigated for future connections above and beyond other pseudo-alternatives prior to any public consultation as to make public-participation in decision making impossible and is thus in breach of Article 6.4 of the Aarhus convention
For context we note the guidance in the Aarhus Convention Implementation guide page 144:

“However, the public authority must still be in the information gathering and processing stage and must be open to persuasion by members of the public to change its position or opinion. Taking steps that might have the effect of decreasing the range of available options may breach article 6, even though no decision has been formally been made. “ For example, while the entering of an agreement between the public authority and a private company may not constitute the taking of a decision, it may still narrow down the range of available options to be considered in the decision-making process. In its findings on communication ACCC/C/2008/24 (Spain), the Compliance Committee held that “entering into agreements relevant to the Convention that would foreclose options without providing for public participation may be in conflict with article 6 of the Convention”.290

And page 145:

“However, providing public participation at a later stage, when certain decisions have already been taken, cannot rectify the failure to provide public participation at an earlier stage when all options were still open. In its findings on communication ACCC/C/2005/12 (Albania), the Committee found it important to: make clear that once a decision to permit a proposed activity in a certain location has already been taken without public involvement, providing for such involvement in the other decision-making stages that will follow can under no circumstances be considered as meeting the requirement under article 6, paragraph 4, to provide “early public participation when all options are open”. This is the case even if a full environmental impact assessment is going to be carried out. Providing for public participation only at that stage would effectively reduce the public’s input to only commenting on how the environmental impact of the installation could be mitigated, but precluding the public from having any input on the decision on whether the installation should be there in the first place, as that decision would have already been taken.”

Non-compliance with Article 6.6 of the Aarhus convention

Aarhus convention Article 6.6 requires that “*Each Party shall require the competent public authorities to give the public concerned access for examination, upon request where so required under national law, **free of charge and as soon as it becomes available, to all information relevant to the decision-making referred to in this article that is available at the time of the public participation procedure**, without prejudice to the right of Parties to refuse to disclose certain information in accordance with article 4, paragraphs 3 and 4.*”

This section will demonstrate that information which was relevant to the decision-making and was available to the State Developer (EirGrid) and/or the Decision-maker (An Board Pleanala) was not provided to the public concerned in general breach of Article 6.6 of the Aarhus convention for the Laois-Kilkenny Reinforcement project.

It is important to note that the developer always had full discretion to make a planning application for a small substation that would have fully supported the new 110kV line that they stated was needed. However, they intentionally chose not to do that but instead to make a planning application for a much bigger substation with a multitude of spare connections and backed up by background studies of what could connect to it. The intention of this project as a starting point for further connections is inescapable and is indeed confirmed by their own words and therefore it is clear that direct and indirect effects based on the existence of the project could be very widespread/significant.

1. The following is a short summary demonstrating some of the information which the competent public authorities had at the time of the procedure but did not provide to us.

| | |
|--------------------------|---|
| Reference dates : | <ul style="list-style-type: none"> • October 2009 First public notice regarding project • 23.04.2014 Planning permission granted by ABP |
|--------------------------|---|

| Relevant information held by authorities | Provided to the public concerned? |
|--|--|
| <p>A. Plans existed for additional future grid connections to the Laois-Kilkenny reinforcement project in the short-medium term.</p> <p>See annotated minutes from EirGrid meeting with ABP on 5th August 2009 [Annex 6] mentioning spare capacity for additional connections. (red text last page in particular)</p> <p>[Annex 5] slides 7-11 = extracts from a presentation dated October 2010 by Mark Norton, EirGrid to Technical Industry. The map shows additional grid connections.</p> <p>The ABP Inspectors report [Annex 4] Recorded our concerns — page 52 <i>“The failure to be fully forthcoming gave rise to the fear that the applicant was trying to disguise a very large national development as a small scale project.”</i></p> <p>Recorded that capacity for growth was one of the key drivers for this solution – page 75 <i>“option 1 was preferred to option 2 on the basis that it involved the least new circuit length and added the greatest amount of spare network capacity for future growth.”</i></p> | <p>Plans for future grid connections / “futureproofing” were not explained or provided.</p> <p>In submissions and at the November 2013 oral hearing, our group made our concerns clear regarding future grid projects. In response EirGrid stated <i>“4.3 It is standard practice both in EirGrid and internationally to develop transmission stations which provide the potential for further development. 4.4 Whilst in some instances, potential needs for part of this expansion capability may be known and explained when a planning application is made, given the expected long term life of the station it would be failing of EirGrid’s obligations as the licensed Transmission System Operator not to provide for expansion capability. [Annex 12]</i></p> <p>The Inspector dismissed our concerns as ‘fear’ – see conclusion [Annex 4] – page 112 <i>“While there are clearly genuine concerns in relation to visual impact, risk of contamination of local water supply and electromagnetic radiation, it is difficult to avoid the suspicion that a fear of what might be facilitated by the proposed Coolnabacky substation has been a prime driver behind the objections to this application.”</i></p> |

| Relevant information held by authorities | Provided to the public concerned? |
|---|--|
| <p>B. Potential HVDC connection from Cork</p> <p>[Annex 1-Ref 006] – ‘scenario 4 – drawing power out of the Cork region’. EirGrid commissioned report dated October 2009, however, via a request for information in 2017, we established that these scenarios were defined at a workshop held at the EirGrid offices in Sept/October 2008.</p> <p>[Annex 5] slides 7-11 = extracts from a presentation dated October 2010 by Mark Norton, EirGrid to Technical Industry. The map shows HVDC line from Cork (purple line). This was presented to ABP.</p> <p>The ABP Inspectors report [Annex 4] did not record concerns over HVDC connection.</p> | <p>The report “<i>Investigating the Impact of HVdc Schemes in the Irish Transmission Network</i>”¹⁶, is available on the internet, however, it was not provided as part of the documentation for the Laois-Kilkenny Reinforcement project public consultation.</p> <p>It was unearthed via our own significant research and therefore, it seems reasonable to assume that many members of the public are unaware of it and the connection to this project.</p> <p>The Inspector dismissed our concerns in a general manner as ‘fear’– see conclusion [Annex 4] – page 112 <i>“While there are clearly genuine concerns in relation to visual impact, risk of contamination of local water supply and electromagnetic radiation, it is difficult to avoid the suspicion that a fear of what might be facilitated by the proposed Coolnabackey substation has been a prime driver behind the objections to this application.”</i></p> |

¹⁶HVDC

[http://www.pleanala.ie/misc/PCI/PCI1/DAF2/2.0%20Missing%20Information/3.0%20Requested%20Reference%20Docs/7.0%20TransGrid%20Solutions%20Inc%20\(2009\)%20Investigating%20the%20Impact%20of%20HVDC%20Schemes.pdf](http://www.pleanala.ie/misc/PCI/PCI1/DAF2/2.0%20Missing%20Information/3.0%20Requested%20Reference%20Docs/7.0%20TransGrid%20Solutions%20Inc%20(2009)%20Investigating%20the%20Impact%20of%20HVDC%20Schemes.pdf)

| Relevant information held by authorities | Provided to the public concerned? |
|--|---|
| <p>C. Grid Connection options for massive private wind export projects existed</p> <p>Joint study by EirGrid and UK National Grid dated 30th January 2013 entitled 'Connection Options for Irish Midlands Wind Generation to the Great British and Irish Transmission system' - see Map – Figure A3. [Annex 7]. This report confirmed what we had suspected i.e. page 6: <i>“EirGrid considered and studied interconnection into four potential Irish substations at Woodland, Laois (planned station), Maynooth and Dunstown.”</i> Although the Laois substation was not one of the initial two preferred connection points, the report also states that <i>“Once the locations of the specific generation developments are known, further studies would be required to confirm the optimal connection points on the Irish transmission system”</i>.</p> <p>See pre-consultation meeting notes dated 7th March 2013 between ABP and 'Greenwire' windfarm export project team. [Annex 11] - page 5 - <i>“It was stated that the current proposal is to export energy to the UK but at some stage in the future it may be possible to link in the Irish system. Discussions with EirGrid have taken place in this regard with the intention to develop the appropriate infrastructure at this stage.”</i> (emphasis added).</p> | <p>The joint EirGrid report which was available at the time 'Connection Options for Irish Midlands Wind Generation to the Great British and Irish Transmission system' [Annex 7] was not provided to the public at the time and was only released following AIE request in 2017.</p> <p>The ABP pre-consultation file¹⁷ is confidential until ABP has decided the nature of the project (note that in Jan 2021 the file is not yet public). ABP refused to grant access under AIE and a copy of the file was only received in late 2018 following appeal to the Information commissioner.</p> <p>Through submission and at the November 2013 oral hearing, our group made our concerns clear regarding possible interconnection with large wind export and other 'renewables' projects. In response EirGrid stated <i>“The Laois-Kilkenny reinforcement project elements are not being developed, whether in whole or in part, to facilitate the connection of renewable generation”</i>. [Annex 12]- item4.8</p> <p>The matter is recorded specifically in the Inspectors report [Annex 4]-page 72 and commented on further on Pages 112-113, where the inspector relied on the information presented by the developer EirGrid and the wind developers websites but did not record any reference to their own pre-consultation file for the Greenwire project.</p> <p>The Inspector dismissed our concerns re. the windfarm connection as <i>“It is unreasonable to expect that they would be factored in to considerations of the present project.”</i></p> |

¹⁷ [Greenwire Pre-Application Consultation with An Bord Pleanala - PL09.PC0148](#)

| Relevant information held by authorities | Provided to the public concerned? |
|---|--|
| <p>D. Connection of renewable projects Solar farm</p> <p>See annotated minutes from EirGrid meeting with ABP on 5th August 2009 [Annex 6] mentioning spare capacity for additional connections to support renewables. (red text last page in particular)</p> <p>In late 2017, a developer (Lightsource) made a planning application to Laois County Council (Local Planning Authority) for one of the biggest solar farms in Ireland. The proposed solar farm was to be approx. 350 Acres and would surround and connect to the Laois-Kilkenny reinforcement project in Laois. [Annex1-Ref 007].</p> <p>In 2018 via AIE we sought the correspondence between the solar developer and EirGrid regarding a grid connection for the solar farm. The response recorded record 14 dated 13.03.2014 'Construction designs from customer'. Access to this was refused even under appeal. [Annex1-Ref 008]</p> | <p>Via submissions and at the November 2013 oral hearing, our group made our concerns clear regarding possible connection of other projects.</p> <p>In response EirGrid stated "<i>The Laois-Kilkenny reinforcement project elements are not being developed, whether in whole or in part, to facilitate the connection of renewable generation</i>". [Annex 12]- item4.8</p> <p>The Inspector dismissed our concerns in a general manner as 'fear' – see conclusion [Annex 4] – page 112 <i>"While there are clearly genuine concerns in relation to visual impact, risk of contamination of local water supply and electromagnetic radiation, it is difficult to avoid the suspicion that a fear of what might be facilitated by the proposed Coolnabackey substation has been a prime driver behind the objections to this application."</i></p> |
| <p>General Comment</p> <p>The local community has constantly sought information to explain why the proposed substation would have so many spare connections, what they would be used for and what impact these connections would have on our area. Please see presentation to the planning oral hearing [Annex 5] -slides 25 and 26 which provide clippings from newspapers highlighting the issue of lack of transparency regarding 'futureproofing'. The public submissions recorded in the Planning Inspectors report [Annex 4] e.g. pages 36-38, 41 further demonstrate this concern as does the reference to it in the Inspector's conclusion on page 112.</p> | |

2. The following legislation and government guidance which was available at the time of these issues will be relied on to provide context for understanding the 'information relevant to the decision-making'.
3. Irish Planning legislation was amended as a result of the European Judgement in Case C-50/09. Government Guidance at that time [Annex 3] provides an overview of the impacts of the case and, as appendices, the changes in legislation which followed incl. a copy of the EIA Directive.

S.I.419/2012 was one of the amending pieces of legislation [Annex 9].

The requirements of Environmental Impact Assessment were to be applied to the Laois-Kilkenny Reinforcement project, as such, the following aspects are important to understand which information was relevant to the decision-making. S.I.419/2012 introduced the following:

2. The Planning and Development Act, 2000 (No. 30 of 2000) is amended— (a) in section 2— (i) by substituting for the definition of "Environmental Impact Assessment Directive" the following definition: "Directive No. 2011/92/EU of the European Parliament and of the Council of 13 December 2011 on the assessment of the effects of certain public and private projects on the environment", and (ii) in the definition of "environmental impact statement" by inserting the following words after "the environment": "and shall include the information specified in Annex IV of Council Directive No. 2011/92/EU",

"Section 171A of the Planning and Development Act 2000

1 In this Part

— ‘environmental impact assessment’ means an assessment, which includes an examination, analysis and evaluation, carried out by a planning authority or the Board, as the case may be, in accordance with this Part and regulations made thereunder, that shall identify, describe and assess in an appropriate manner, in light of each individual case and in accordance with Articles 4 to 11 of the Environmental Impact Assessment Directive, the direct and indirect effects of a proposed development on the following: (a) human beings, flora and fauna, (b) soil, water, air, climate and the landscape, (c) material assets and the cultural heritage, and (d) the interaction between the factors mentioned in paragraphs (a), (b) and (c).

4. The Government guidance **[Annex 3]** also explains:

“5.16 The effects on the environment to be assessed are the full effects of the proposed development rather than merely the effects of the works to be carried out. Direct, indirect and cumulative effects should be evaluated. The assessment should also take account of the different stages of the development including construction, operation and decommissioning where relevant.”

5. European Court Cases also provide some context:

ECJ Case C-2/07 Paul Abraham and Others v Région wallonne,¹⁸ (emphasis added)

“42 As stated in paragraph 32 of this judgment, the Court has frequently pointed out that the scope of Directive 85/337 is wide and its purpose very broad. In addition, although the second subparagraph of Article 4(2) of Directive 85/337 confers on Member States a measure of discretion to specify certain types of projects which will be subject to an assessment or to establish the criteria and/or thresholds applicable, the limits of that discretion are to be found in the obligation set out in Article 2(1) that projects likely, by virtue inter alia of their nature, size or location, to have significant effects on the environment are to be subject to an impact assessment. In that regard, Directive 85/337 seeks an overall assessment of the environmental impact of projects or of their modification.

43 It would be simplistic and contrary to that approach to take account, when assessing the environmental impact of a project or of its modification, only of the direct effects of the works envisaged themselves, and not of the environmental impact liable to result from the use and exploitation of the end product of those works.

44 Moreover, the list laid down in Article 3 of Directive 85/337 of the factors to be taken into account, such as the effect of the project on human beings, fauna and flora, soil, water, air or the cultural heritage, shows, in itself, that the environmental impact whose assessment Directive 85/337 is designed to enable is not only the impact of the works envisaged but also, and above all, the impact of the project to be carried out.”

The opinion of Advocate General Kokott in ECJ Case [C-142/07 Ecologistas](#),¹⁹ considered connected projects:

“51. Lastly, the objective of the EIA Directive cannot be circumvented by the splitting of projects. (23) Where several projects, taken together, may have significant effects on the environment within the meaning of Article 2(1), their environmental impact should be assessed as a whole. (24) It is necessary to consider projects jointly in particular where they are connected, follow on from one another, or their environmental effects overlap.”

6. The Aarhus Implementation guide also provides relevant guidance.

¹⁸ Judgement ECJ Case C-2/07 Paul Abraham and Others v Région wallonne 28 February 2008
<http://curia.europa.eu/juris/document/document.jsf?text=&docid=69435&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=21222027>

¹⁹ opinion of Advocate General Kokott ECJ Case C-142/07 Ecologistas
<http://curia.europa.eu/juris/document/document.jsf?jsessionid=9ea7d2dc30d5f1e9630a98b3428ba603dd0ef3c59b9c.e34KaxiLc3qMb40Rch0SaxyKbxz0?text=&docid=69465&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=136773>

“Finally, the relevant public authority must give access to the information “as soon as it becomes available”. This obviously imposes a continuing obligation on the public authorities to make new information available to the public in the same manner as the original information, as soon as it comes to light. The principle found in this obligation is also to some extent found in the Espoo Convention, which requires its Parties to inform the other concerned Parties immediately if additional information on a significant transboundary impact of a proposed activity which was not available at the time a decision was made with respect to that activity and which could have materially affected the decision, becomes available before work on that activity commences (Espoo Convention, article 6, para. 3).”²⁰

7. The EIA Directive is explicit in the requirement that the assessment consider the direct and indirect effects of a project on specified factors and Annex IV requires that the following information be provided (emphasis added) e.g.

“1. A description of the project, including in particular:

(a) a description of the physical characteristics of the whole project and the land-use requirements during the construction and operational phases;

...

(c) an estimate, by type and quantity, of expected residues and emissions (water, air and soil pollution, noise, vibration, light, heat, radiation, etc.) resulting from the operation of the proposed project...

4. A description ⁽¹⁾ of the likely significant effects of the proposed project on the environment resulting from:

(a) the existence of the project; (b) the use of natural resources; (c) the emission of pollutants, the creation of nuisances and the elimination of waste.

(¹) This description should cover the direct effects and any indirect, secondary, cumulative, short, medium and long-term, permanent and temporary, positive and negative effects of the project.

8. According to the following information on RES LEGAL Europe-the website on regulations on renewable energy generation²¹ *“Connection to the grid - The Irish grid operators are obliged to provide a connection offer to every operator of a (renewable) energy plant if the plant operator has applied for such a connection.”* To us, it appears obvious that building a project with spare capacity in our locality is an open invitation to developers that would inevitably lead to further connected development and that this had to be accounted for somehow in the environmental assessments. This point was repeatedly raised e.g. [Annex 5-Slides 18, 25, 26, 27], [Annex 4] pages 36-38, 41 etc.
9. What appears clear from the legislation and the legal guidance / interpretation is that the objective of EIA is very broad and that impacts from the project (direct/indirect and cumulative) which result from the existence and use of the facility cannot be totally ignored especially if information is available. In this instance, considering that one of the key drivers for selecting this solution is that it *“added the greatest amount of spare network capacity for future growth”*, ABP Inspectors report [Annex 4] page 75, some consideration simply must be given to what that spare capacity is intended for and its potential impacts prior to permitting it to be constructed as a hub for further development. To do otherwise would be to disregard the nature of the project in a sensitive location without proper assessment of impacts arising from the existence of the project.

²⁰ Aarhus Implementation guide page 149

https://www.unece.org/fileadmin/DAM/env/pp/Publications/Aarhus_Implementation_Guide_interactive_eng.pdf

²¹ Updated: 08.01.2019 <http://www.res-legal.eu/search-by-country/ireland/single/s/res-e/t/gridaccess/aid/connection-to-the-grid-30/lastp/147/>

10. The vulnerability of the location for this project (atop a regionally important groundwater aquifer which is classified as highly vulnerable) must also be considered a factor as Article 2 of the 2011 EIA Directive requires “*Member States shall adopt all measures necessary to ensure that, before consent is given, projects likely to have significant effects on the environment by virtue, inter alia, of their nature, size or location are made subject to a requirement for development consent and an assessment with regard to their effects.*” (emphasis added).
11. Thus, we submit that information existed which was relevant but was not provided to the public concerned and is therefore a breach of Article 6.6 of the Aarhus convention.
12. **For Information -** The following examples will demonstrate that our concerns about wider impacts arising from this grid project were valid and are already being proven:
13. **EirGrid will connect 350 acre Solar Farm to Coolnabacky substation** - In late 2017, a developer (Lightsource) made a planning application to Laois County Council (Local Planning Authority) for one of the biggest solar farms in Ireland²². The proposed solar farm is to be approx. 350 Acres and will surround and connect to the Laois-Kilkenny reinforcement project Coolnabacky substation. **[Annex1-Ref 007]**. This is the solar farm for which EirGrid received ‘Construction Designs’ dated 31.03.2014 [Annex 1-Ref 008].

In the planning application, the solar developer stated that “*the 110kV cables linking the EirGrid substation and the proposed solar farm will be installed by EirGrid and do not form part of this application.*” **[Annex1-Ref 009]**.

In 2018 by letter EirGrid confirmed that “*a connection offer has been issued and accepted*” to connect the solar farm to the Coolnabacky substation **[Annex1-Ref 010]**.

Despite public objections to the solar farm which highlighted among other things, that EirGrid had stated the Coolnabacky substation was not for the connection of renewables, permission for the solar farm was granted by the local authority without an EIA or AA.

14. **EirGrid will own and operate a new substation to connect Pinewoods windfarm to the Laois-Kilkenny Reinforcement Project** - At the time of the oral hearing, a planning application for this windfarm was withdrawn. However, in 2016, a planning application was submitted to Laois County Council stating “*One of the major strategic benefits of the subject site, is that the permitted 110kV Laois-Kilkenny Grid Reinforcement Project (An Bord Pleanála Reference PL11.VA0015) passes directly through the site.*” and, “*Following detailed discussions with Eirgrid, it has been agreed that the proposed development can loop directly into this 110kV line via a substation/switchroom at the subject site.*” In the most recent planning application October 2020²³ “*The proposed substation will, once operational, become a ‘node’ on the national electricity network and will be largely operated and maintained by Eirgrid as part of the national electricity network.*”

i.e. As part of the planning oral hearing for the Laois-Kilkenny reinforcement project, we were told by EirGrid that the grid project was not for renewables [Annex 12 – point 4.8], and yet now, a short time later, we have statements that EirGrid will directly connect a solar farm to the Coolnabacky substation and will own and operate a separate substation to connect a windfarm to the Laois-Kilkenny reinforcement project.

If neither EirGrid nor ABP have to live up to statements provided and relied on at the oral hearing, are other statements flexible too? What was the point of the entire exercise?

²² Planning reference 17532 Laois County Council - <http://www.eplanning.ie/LaoisCC/AppFileRefDetails/17532/0>

²³ <https://pinewoodswindfarmsubstationsid.ie/stat-cont/uploads/2020/10/1.-Letter-to-An-Bord-Pleanala.pdf>

Non-compliance with Article 6.6 (b) of the Aarhus convention

Aarhus convention Article 6.6(b) requires that *“the relevant information shall include at least (b) A description of the significant effects of the proposed activity on the environment.”*

This section will show that the relevant information under Article 6.6 b) was not provided to the public / planning authority. To do so we will demonstrate that the planning authority avoided dealing with each significant item of concern, which effectively results in the same outcome i.e. issues of concern raised by the public are not addressed in the environmental assessment. The following is a non-exhaustive sample of the issues identified.

1. The project started with the developer assuming an EIS would be required [Annex 6] page 5, however, ABP did not require one initially. Thus one round of public submissions was completed prior to a request for an EIS, meaning, the developer and ABP were made aware of perceived omissions in the documentation. In response, during April, 2013, ABP requested submission of an EIS as further information²⁴. The information submitted was an addendum to that already provided but that still did not address the issues of significance raised. It is difficult to demonstrate the absence of something, in order to do so we will demonstrate that the planning authority avoided dealing with known significant items of concern or sought to gather the missing information via conditions.
2. Aarhus Implementation Guide page 147 - Article 6 *“Paragraph 6 - provides that all information relevant to the decision-making must be made available. This is not limited to environmental information. Consistent with the other provisions of the Convention, this means information in whatever form. It should not be interpreted in a way that would limit the availability of information to reports or summaries.”*
Page 148 “To hold otherwise would mean that decision-making could proceed without the public authorities themselves considering all the minimum information relevant to a decisionmaking” procedure.
As such, any information relating to e.g. legal obligations on EirGrid to accommodate renewable generators is very relevant in the context of using the spare capacity.
3. Because the Laois-Kilkenny Reinforcement project was knowingly designed with spare capacity specifically for further development in the context of:
 - state policy to expand and even export electricity generated by renewables,
 - private and State large-scale renewable energy projects local to the project,
 - studies carried out to ensure large scale futureproofing (e.g. HVDC / new lines) and
 - a legislative background that appears to oblige the grid developer to connect renewable generator applicants

It is obvious that the impacts of the Laois-Kilkenny Reinforcement project would not be limited to construction impacts of the described project. The environmental impacts arising from construction and existence of the project could be very wide ranging indeed due to the significant spare capacity and the context of wider government policy to expand renewables and power lines.

4. The previous section (non-compliance with Aarhus Article 6.6 shows that much of the information was simply not provided even though it existed). The Planning Inspectors report [Annex 4] shows that while the public were seeking to have this information provided and included as part of the environmental assessment, it was not available and would not be considered as part of the decision-making e.g.

Page 112 *“While there are clearly genuine concerns in relation to visual impact, risk of contamination of local water supply and electromagnetic radiation, it is difficult to avoid the*

²⁴ Schedule of correspondence, Laois-Kilkenny reinforcement project
<http://www.pleanala.ie/documents/controls/VA0/CVA0015.pdf>

suspicion that a fear of what might be facilitated by the proposed Coolnabackly substation has been a prime driver behind the objections to this application. Notwithstanding the stated purpose of the proposed development as a Laois/Kilkenny electricity reinforcement project it was held that spare bays within the substation (referred to by the applicant as “future proofing”) would enable the connection of wind farms into the grid.”” There is very considerable uncertainty over these wind farms, or, indeed, any other wind farms which have not even reached planning application stage. It is unreasonable to expect that they would be factored in to considerations of the present project.”

Page 113 “During the oral hearing, there also appeared to be concern that the proposed development would facilitate one of the even larger wind farms designed to export electricity to the United Kingdom. It was clarified towards the end of the oral hearing that this would not be the case and that these projects are standalone and would export electricity via their own power lines rather than through the national grid and the East – West Interconnector.”

Page 72 - “Not proposed in order to connect renewable power generation (para. 4.8 of Mark Norton submission).”

5. Likewise, as there was no SEA or accompanying AA in existence for the national plan for windfarms and there were deficiencies in the SEA and public consultation process for the GRID25 SEA, this meant that there could not be any effective tiering in relation to these obviously relevant plans. [Annex 4] page 46/47. Inspectors report [Annex 4] demonstrates that this information was not included: *“In my view, the Board must restrict its considerations in this regard to environmental impact assessment and the consideration of the adequacy of the SEA process is beyond its remit.”*
6. The RTS Action Group and EAAI raised concerns over Accidents involving fire / transformer oil / sf6 gas. e.g. See Annex 5 – slides 21, 22, 23.(these issues were presented to highlight deficiencies in the EIS regarding ‘significant effects’. The EIS was received by ABP 16th August, 2013²⁵. The oral hearing presentation was Nov. 2013 demonstrating that all the issues regarding additional lines / capacity / windfarms / fire-gas and accidents still remained unaddressed at that stage). These elements are integral to the project. A full description of the ‘whole project’ should have included the quantities and chemical information regarding these substances such that an assessment would be possible to evaluate the environmental impacts of an accident involving any/all of these.

Subsequent events in Ireland, both initiated by a whistleblower, have validated the potential for significant impacts from these types of substances e.g. 21 Sep 2020 *“The ESB is facing a prosecution by the Environmental Protection Agency over leaks of a powerful greenhouse gas called SF6.” “Leaks of this gas from the ESB’s Moneypoint plant were investigated by the EPA following disclosures by the whistleblower...” “The EPA’s report, seen by RTÉ, found that despite the hazardous nature of SF6, leaks at the plant were not repaired as they arose.”*

Sf6 gas is not mentioned in the Inspectors report. If information had been provided then that would have had to form part of the Inspectors analysis of the Impacts of the project. However, there is only a mention of a need for *“a Major Emergency Plan in the event of an accident.”* Page 42.

7. While the Laois project reportedly does not involve underground power cables, it does involve the same State contractor as mentioned in the following news report and some of the largest oil filled transformers in the country sitting atop a highly vulnerable aquifer. The following news report gives an idea of the significance of the risk:

February 26 2020 *“THE Environmental Protection Agency (EPA) has recommended criminal prosecution against the ESB over the leaking of hazardous chemicals from underground*

²⁵ Schedule of correspondence, Laois-Kilkenny Reinforcement project
<http://www.pleanala.ie/documents/controls/VA0/CVA0015.pdf>

power cables. A report published today found ESB was aware of 68 leaks of dangerous insulating oil over a 25 year period up to last summer but only notified authorities about 20 of them. That's despite the potential danger to public health and the environment from the substances entering water sources and soil."

The concern over uncontrolled risk such as fire/accident was recorded in the Inspectors report ²⁶ page 42 as "*There would be a need for a Major Emergency Plan in the event of an accident.*" but was not dealt with any further and is not mentioned at all in the Board Direction ²⁷. (this can be confirmed by searching either document for e.g. fire / accident / sf6). Demonstrating that information on significant risk due to fire/accident was not provided.

8. By further example, even after planning permission was granted, information relevant to potential significance of effects was still being gathered. See e.g. [Annex 10] planning Condition no. 11 "*The construction of the development shall be managed in accordance with a Construction Management Plan, which shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. This plan shall provide details of intended construction practice for the development including: (j) details of appropriate mitigation measures for noise, dust and vibration, and monitoring of such levels*".

²⁶ Inspector's report <http://www.pleanala.ie/documents/reports/VA0/RVA0015.pdf>

²⁷ Board Direction <http://www.pleanala.ie/documents/directions/VA0/SVA0015.pdf>

Non-compliance with Article 9.4 of the Aarhus convention

Article 9.4 of the Aarhus convention requires that “*In addition and without prejudice to paragraph 1 above, the procedures referred to in paragraphs 1, 2 and 3 above shall provide **adequate and effective remedies**, including injunctive relief as appropriate, and be **fair, equitable, timely and not prohibitively expensive**. ...*”

For any system of checks and balances to work effectively, the starting point is that rules need to be clear, easily understood and accessible to those who need to rely on them, this includes the risks of using a system. Those relying on such a system to protect their rights need to be confident that the output from such a system will be reliable i.e. the system is accessible and predictable in producing outcomes which uphold the rights of citizens.

This section sets out to demonstrate that from the perspective of the public, seeking judicial review of environmental decision-making is fraught with risk and often unknowable variables for the public. In our case, this unpredictability of risk combined with the actions of State authorities blocked access to justice. Thus we submit, judicial review, as the only remedy available, was not an effective remedy for a legal challenge to planning permission for the Laois-Kilkenny Reinforcement Project and is therefore in breach of Article 9.4 of the Aarhus convention.

This section will focus on demonstrating that legal costs in Ireland are prohibitively expensive and acknowledged to be so and that against this backdrop, State authorities have used the threat of these known high and unpredictable costs against citizens in a manner that flies in the face of supporting effective access to justice in environmental cases. This is further exacerbated by a long –standing lack of a clear framework to implement Aarhus Access to Justice rights and the known unpredictability of outcome in current cost protection rules (wide discretion for judges = lack of predictability for citizens).

1. The preamble to the Aarhus Convention provides some relevant context for this section:

Preamble 8 “*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,*”

Preamble 18 “*Concerned that effective judicial mechanisms should be accessible to the public, including organizations, so that its legitimate interests are protected and the law is enforced,*”

Regarding preamble 18, Aarhus Implementation Guide (2nd edition) explains at page 35 “*The next point in this paragraph is that judicial mechanisms for enforcement of the law and for redress in the case of infringement of rights should be accessible to the public. One major aspect of accessibility is cost, which is addressed several times in the Convention*”.

2. Aarhus Convention Article 3 General Provisions are also relevant to this section “*2. Each Party shall endeavour to ensure that officials and authorities assist and provide guidance to the public in seeking access to information, in facilitating participation in decision-making and in seeking access to justice in environmental matters.*”
3. The following points provide some context to understanding the basis of what is ‘effective access to justice’ in the context of the Aarhus Convention:

“*44. Since the communicant’s judicial review proceedings were judicial procedures under article 9, paragraph 3, of the Convention, these proceedings were also subject to the requirements of article 9, paragraph 4, of the Convention. The Committee finds that the*

quantum of costs awarded in this case, £39,454, was prohibitively expensive within the meaning of article 9, paragraph 4, and thus, amounted to non-compliance.” Page 239 ²⁸

“52 When evaluating the compliance of the Party concerned with article 9 of the Convention in each of these areas, the Committee pays attention to the general picture on access to justice, in the light of the purpose also reflected in the preamble of the Convention, that “effective judicial mechanisms should be accessible to the public, including organizations, so that its legitimate interests are protected and the law is enforced” (Convention, preambular para. 18; cf. also findings on communication ACCC/C/2006/18 concerning Denmark (ECE/MP.PP/2008/5/Add.4), para. 30). Therefore, in assessing whether the Convention’s requirement for effective access to justice is met by the Party concerned, the Committee looks at the legal framework in general and the different possibilities for access to justice, available to members of the public, including organizations, in different stages of the decision-making (“tiered” decision-making).

(Bulgaria ACCC/C/2011/58; ECE/MP.PP/C.1/2013/4, 11 January 2013, para. 52)” Page 579 ²⁹

4. As demonstrated in our original complaint (and restated here for ease of reference), the only mechanism, to challenge a planning permission granted for Strategic Infrastructure Development is through a court procedure. See Planning and Development Act 2000 ³⁰, Section 50-Judicial review of applications, appeals, referrals and other matters.
“(2) A person shall not question the validity of any decision made or other act done by—
...(a) a planning authority, a local authority or the Board in the performance or purported performance of a function under this Act
...otherwise than by way of an application for judicial review under Order 84 of the Rules of the Superior Courts (S.I. No. 15 of 1986) (the ‘Order’).”

²⁸ Compilation of findings of the Aarhus Convention Compliance Committee adopted 18 February 2005 to date Version 23 April 2019

²⁹ Compilation of findings of the Aarhus Convention Compliance Committee adopted 18 February 2005 to date Version 23 April 2019

³⁰ Planning and Development Act 2000 – section 50

<https://revisedacts.lawreform.ie/eli/2000/act/30/section/50/revised/en/html>

5. The following extracts from news articles etc. demonstrate that the cost of going to court in Ireland is already prohibitively expensive, is widely known to be so and publicly acknowledged to be a barrier to access to justice by e.g. the judiciary, the Troika etc. The public are also acutely aware of the potentially ruinous impacts of taking a court case in Ireland. However, for environmental cases such as ours, there is no other option than to play Russian Roulette with this loaded system.

| Date of article | Extract |
|---------------------------|--|
| 12 Jan 2013 ³¹ | <p>Commission: Legal services are still too expensive in Ireland <i>“WHILE OTHER SECTORS of the economy have experienced “considerable cost adjustments”, the Troika has expressed its concern that legal services remain expensive in Ireland. According to a draft European Commission report seen by TheJournal.ie, the high cost of legal services continues to pose problems for the country. The necessary reforms are important to competitiveness and must be implemented quickly and effectively, the Troika told the authorities.</i></p> <p><i>“High legal costs also lead to equity concerns, as low income households who cannot afford high legal fees may be locked out of equal access to justice, according to the Commission.”</i></p> |
| 02 Mar 2015 ³² | <p>Irish examiner Legal costs challenged: Scale of fees are a barrier to justice <i>ANYONE who has gone through an acrimonious divorce, a complicated business-related court case, or God forbid, a case involving medical negligence where the defendants are not fighting with their own money, did not need the Troika to tell them that Ireland’s legal fees are among the most spectacularly prohibitive in the world or that they were a barrier to the proper conduct of public life.”</i> <i>“Justice is either for the very rich or those who can avail of free legal aid schemes. Going to court is not a course easily undertaken by most citizens as losing could be financially ruinous. Potential bills make the risk untenable.</i> <i>The conclusion of a long-running case in the High Court just last December heard by the President of the High Court, Mr Justice Nicholas Kearns, over a few feet of boundary hedge, illustrates this situation perfectly.</i> <i>Though there were many elements involved, the fact that the Wicklow couple who lost their case, and had costs awarded against them, faced a bill estimated to be in the region of €500,000 shows how utterly bizarre legal costs are in Ireland.</i></p> |
| 24 Nov 2015 ³³ | <p>JUDGMENT of Mr Justice Max Barrett [2015] IEHC 732 <i>“He has gone to a solicitor, he has engaged an actuary, he has gone to counsel. But he has been slow in coming to court. This is hardly surprising. Almost a hundred years after the opening salvoes that led to the creation of our present republic, we have now an expensive court system that remains alien to many and truly accessible to increasingly few.”</i> <i>“...this is yet a matter that ought to be resolved collaboratively if possible, by mediation if not, by expert decision if necessary and, only as a very last resort, in this fearfully expensive forum.”</i></p> |

³¹ <http://www.thejournal.ie/euroleaks-troika-legal-services-750176-Jan2013/>

³² <http://www.irishexaminer.com/viewpoints/ourview/legal-costs-challenged-scale-of-fees-are-a-barrier-to-justice-315470.html>

³³ <http://www.bailii.org/ie/cases/IEHC/2015/H732.html>

| Date of article | Extract |
|------------------------------|---|
| 22 August 2016 ³⁴ | <p><i>“Cost of Going to court reinforces inequalities - Like a posh hotel, the civil courts are open to everyone, but only the wealthy can afford to go there. Michael Clifford highlights some recent cases that show the prohibitive cost of justice”</i></p> <p><i>“She did, however, take what in retrospect was a huge gamble. She sought justice through the courts on the basis that she felt she had been grievously wronged. Such a course of action is supposed to be a cherished right for citizens in a democracy. In truth, it’s a sham.”....</i></p> <p><i>“Judge Barrett also noted that she was in danger of losing her home as a result of her foray into the legal world. Despite all that, the judge said he was legally bound to grant the judgement. Ms Lawless was a competent adult who had retained legal counsel and that comes with a cost.”</i></p> |
| 27 Sep 2017 ³⁵ | <p>“Rules must be changed to widen access to justice – Chief Justice</p> <p><i>“High costs and outdated procedures’ deter many people from taking legal action The civil justice system must be reformed to allow access to justice for all citizens, the Chief Justice has said.”</i></p> |
| 15 Oct 2017 ³⁶ | <p><i>Caveat emptor: The soaring cost of legal services</i></p> <p><i>Irish legal costs are now so high that some types of litigation are simply beyond the reach of the average person. In the first part of a week-long investigation, our legal affairs editor asks what can be done to make legal services affordable to all</i></p> <p><i>Chief Justice, Frank Clarke –</i></p> <p><i>“The prospect of having to pay astronomical legal fees has long been an obstacle for regular people seeking justice in Ireland’s superior courts. Win, and the other side usually has to pay your lawyers’ fees. Lose, and you might have to sell your home or worse.”</i></p> <p><i>“It is no wonder then that analysts at The Lawyer, a UK-based specialist legal publication, describe Ireland as the “least transparent jurisdiction in Europe” from a data collection perspective.”</i></p> <p><i>“During the bail-out years, the Troika repeatedly criticised the high cost of legal services in Ireland.</i></p> <p><i>In response, barristers in the criminal courts had their fees slashed, and bodies like the State Claims Agency sought better value for money by inviting tenders for legal services.</i></p> <p><i>However, Ireland remains an expensive place to litigate and the price of legal services is going up rather than down, according to the National Competitiveness Council (NCC).”</i></p> |
| 8 May 2018 ³⁷ | <p><i>Only ‘paupers and millionaires’ can afford court – judge.</i></p> <p><i>Middle class faces financial ruin in High court: Kelly”</i></p> <p><i>“The squeezed middle is being priced out of justice and a cap on lawyers’ fees is required to protect them from financial ruin in the courts, a leading judge has warned.”</i></p> |

³⁴ <https://www.irishexaminer.com/opinion/columnists/arid-20416992.html>

³⁵ <https://www.irishtimes.com/news/crime-and-law/rules-must-be-changed-to-widen-access-to-justice-chief-justice-1.3234950>

³⁶ https://www.independent.ie/irish-news/caveat-emptor-the-soaring-cost-of-legal-services-36222383.html?google_editors_picks=true

³⁷ <https://www.pressreader.com/ireland/irish-independent/20180508/281479277047148>

| Date of article | Extract |
|----------------------------|--|
| | <p>... <i>“High Court President Peter Kelly, who is chairing the review, said legal fees have risen to such an extent that it simply wasn’t feasible for many people to litigate. “If you are a pauper, yes. If you are a millionaire, yes. But if you are a middle-class person on a middle-class salary, litigation in the High Court is potentially ruinous” he said.”</i></p> |
| Jul 31, 2018 ³⁸ | <p><i>“Urgent action needed on access to justice for citizens, says Supreme Court; Access to civil courts, guaranteed by Constitution, threatened by rising litigation costs”</i></p> <p>“</p> <p><i>‘ Mr Justice William McKechnie said he is increasingly concerned about the difficulties many potential litigants face in attempting to gain access to justice.</i></p> <p><i>The right of access to the courts, a personal right of every citizen guaranteed by the Constitution, “is of little practical value to the majority of litigants if they cannot afford the ever-rising price of litigation.” “This is a real and pressing issue facing our justice system,” he said. “The cost of litigation is forever increasing beyond the means of more and more people.” ‘</i></p> |

6. Noting Aarhus Implementation Guide page 202 – *“The Committee stressed that “fairness” in article 9, paragraph 4, refers to what is fair for the claimant, not the defendant, a public body”*.

Already, the lack of fairness in this system is obvious i.e. when citizens try to challenge State Authorities like ABP and EirGrid in court, the citizens carry the fundamentally greater risk (if the State loses, their costs are covered regardless - State agents are not in fear of losing their homes if the court judgement goes against them.) This alone is a powerful and fundamental imbalance in ‘fairness’ which we suggest on its own is a breach of Article 9.4 of the Aarhus convention and a strong motivator to not challenge environmentally harmful decisions.

7. In theory, Planning and Development Act section 50B Costs in environmental matters [Annex 13] provides for each party to cover their own costs, however, a reading of this provides a layperson with no certainty over the degree of protection which actually applies as there is such a wide degree of discretion available to the court. E.g.

“(3) The Court may award costs against a party in proceedings to which this section applies if the Court considers it appropriate to do so— (b) because of the manner in which the party has conducted the proceedings”. This effectively means that every decision can expose you to costs. Decisions to amend the statement of grounds for the case, decisions that might delay a developer etc.

8. We were opposed to the RTS case (2014/340 JR) being fast-tracked through the commercial court as this placed huge time pressure on a working community to simultaneously fund-raise and assist in preparing legal arguments (unlike EirGrid and ABP, our community did not have a legal team that was present throughout the entire planning process and was familiar with the issues involved.) However, legal advice was that if the move to the fast-track commercial court was objected to and the case was processed more slowly through the high court, if we lost, we would be open to the significant costs of project delays from the developer. (The developer, EirGrid argued that this was an €80million project and *“In these circumstances, the commercial activities of EirGrid in relation to the implementation of the Laois- Kilkenny Reinforcement Project will be significantly impacted*

³⁸ <https://www.irishtimes.com/business/economy/urgent-action-needed-on-access-to-justice-for-citizens-says-supreme-court-1.3582463>

upon if the within proceedings are not disposed of expeditiously”³⁹). And so, due to the high risk of exposure to significant costs, we did not oppose the move to the commercial court. i.e. a further imbalance in ‘fairness’ which is underpinned by the lack of certainty over costs.

9. Left with no option other than a court case, the RTS Group and EAAI sought assurances from the public authorities that Section 50B cost protection applied to our case and a motion was scheduled in the commercial court to establish this. EirGrid had accepted this in principle [**original complaint-attachment 3**], however, ABP argued that this could only be determined once the details of the case are understood and ‘*would be a waste of court time to determine at this stage whether S50B would apply when this will not be determinative of the costs issues that may arise*’ (emphasis added) and stated that they would pursue us for the costs of this if we did not withdraw the motion for cost protection. [**Original complaint-Attachment 4**]. Thus, threat of costs was effectively used by a State authority to block any level of certainty over costs exposure. Indeed, this confirms that a section 50 cost protection would not be determinative and therefore is of limited if any value. Note that this appears to be a direct breach of the Aarhus supports that public authorities are supposed to honor in order to ensure that the public have access to their rights under the convention. In the context of such a high costs regime, such support becomes critical.
10. The judge ruled against our case and we prepared our grounds for appeal (then and now, we remain of the belief that the planning permission granted was fundamentally flawed and our rights were breached). As we demonstrated in our original complaint to the Aarhus committee [original complaint-Attachment 5], our appeal triggered a threat of costs from ABP which resulted in withdrawal of our application for appeal under duress. This also halted any chance of appeal to the European Court of Justice which formed part of our appeal request.
11. We can demonstrate that this is not an isolated approach. Please see [**Annex 14**] and [**Annex 15**] which are witness statements from other groups which also took court cases against energy projects on environmental grounds. In each instance, ABP threatened to pursue the group for costs if the appeal was proceeded with. As such, it would appear that the uncertainty, which ABP knows exists in cost protection [**original complaint-Attachment 4**], is being actively used by the State to seek to limit / discourage the judicial review of environmental decisions.
12. If costs were not high for members of the public then a threat of seeking costs would not be effective and therefore would not be used. The fact that a threat of costs is used in such a manner by state authorities against citizens in circumstances not of their own making, but by virtue of the fact that they sought to protect their local environment from an industrial energy developer is reprehensible. The State, and by extension, its agents have fundamental obligations to vindicate the personal rights of citizens (Irish Constitution Article 40⁴⁰).
13. Finally, Aarhus convention Articles 3.1 – 3.3 place obligations on the State to “take the necessary legislative, regulatory and other measures, including measures to achieve compatibility between the provisions implementingand 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.**” Which includes ensuring “that officials and authorities assist and provide **guidance to the public** in ... seeking access to justice in environmental matters.” And promoting environmental education **among the public**, especially on how to obtain access to justice in environmental matters.

³⁹ Point 10 of Affidavit of Ray Niland on 16th July 2014 on behalf of EirGrid as notice party in case 2014/340 J.R.

⁴⁰ <http://www.irishstatutebook.ie/eli/cons/en/html#part13>

14. Such measures are obviously part of the systemic framework to ensure that Access to justice is effective, fair and not prohibitively expensive etc. in order to achieve the aims of Article 9.4. However, the Irish State has not implemented such a framework to ensure its obligations under the Access to Justice aspects of the Aarhus convention are met. At the time of our legal case, the following appears to have been the key framework guidance: “8.— *Judicial notice shall be taken of the Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters done at Aarhus, Denmark on 25 June 1998.*”⁴¹
15. The following screenshot⁴² from an article dated September 2015 shows that an Aarhus Convention Bill was intended for 2016.

| III F | | WILLIAM FRY |
|--------------------------|--|---|
| ENVIRONMENTAL & PLANNING | | |
| Bill | Purpose | Current/Status Expected Publication Date |
| Aarhus Convention Bill | To consolidate and clarify the existing costs provisions in one piece of legislation, to provide a statutory basis for a number of other provisions of the Aarhus Convention and related EU Directives | 2016 |

16. The 2018 Department of Communications, Climate Action and Environment Ministerial brief⁴³ recognises that costs are an issue and action is still required. “*The Aarhus Bill is informed by case law and important judgments have been delivered in recent years related to the costs of accessing justice. The challenging issue of how to address the costs of environmental litigation to ensure that it is not prohibitively expensive for citizens is the greatest challenge, given the high legal costs in Ireland.*” At the current point in time, the State appears to be more interested in removing public rights via ‘covid regulations’ (where they managed to produce approx. 100 legal instruments in 2020 alone), than securing rights such as access to justice in compliance with the Aarhus convention which has been in discussion for at least 5 years as per the point above.
17. As demonstrated by [Original complaint – Attachment 2] the State has funded judicial training for wind developers, meanwhile, the support framework for the public seems to be completely lacking. We are not aware of any such State sponsored training freely available to members of the public who need it the most i.e. those facing daunting judicial review cases on e.g. environmental grounds.
18. Aarhus Implementation Guide page 204 “*Finally, the Convention requires Parties to provide review procedures that are “not prohibitively expensive”. The cost of bringing a challenge under the Convention or to enforce national environmental law must not be so expensive that it prevents the public, whether individuals or NGOs, from doing so.*” Page 203 “*The Committee concluded that, despite the various measures available to address prohibitive costs in the Party concerned, taken together they did not ensure that the costs remained at a level which met the requirements under the Convention. It held that the considerable discretion given to the Party concerned’s courts in deciding the costs — without any clear legally binding direction from the legislature or judiciary to ensure the costs were not prohibitively expensive — led to considerable uncertainty regarding the costs to be faced where claimants were legitimately pursuing environmental concerns that involved the public interest.*”⁴⁵¹ In the light of the above, the Committee concluded that the Party concerned had not

⁴¹ Environment (Miscellaneous Provisions) Act 2011, Part 2 section 8

<http://www.irishstatutebook.ie/eli/2011/act/20/enacted/en/pdf>

⁴² <https://www.williamfry.com/docs/default-source/2015-pdf/government-legislation-programme-autumn-winter-2015.pdf?sfvrsn=2>

⁴³ <https://assets.gov.ie/77116/3fff3a93-eeef-4c63-b976-7d855b1caa9f.pdf>

adequately implemented its obligation in article 9, paragraph 4, to ensure that the procedures subject to article 9 were not prohibitively expensive. ⁴⁵² “

19. In conclusion, the Judicial review procedure available to the RTS Group was prohibitively expensive to the extent that we were effectively prevented from enforcing our rights to participate in decision-making under the Aarhus convention and from enforcing national environmental law. Accordingly, we believe this is a breach of Article 9.4 of the Aarhus convention.

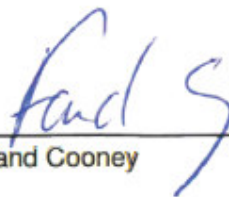
END

Terms / Public Authorities

| | |
|----------------------|---|
| AIE | Request for Environmental Information under the Access to Information on the Environment Regulations. |
| ABP | An Bord Pleanála – Public authority for planning consent. Where Strategic infrastructure is involved (as in this case) the planning application goes straight to An Bord Pleanála. http://www.pleanala.ie/about/function.htm |
| EirGrid | EirGrid, as the state-owned Transmission System Operator (TSO), is a public authority. They are also an environmental decision-maker in their own right as demonstrated by the fact that they conducted the SEA for the GRID25 element of the Irish Wind/grid plan. “a state-owned company that manages and operates the transmission grid across the island of Ireland.” http://www.eirgridgroup.com/about/ “ <i>Eirgrid, a separate and independent state owned company, manages the power flows on the transmission system including controlling the electricity generated by all the major generation facilities. Eirgrid also plans the development of the system to ensure that the transmission system is adequate to meet the growing demand for electricity into the future and also to accommodate the increased proportion of electricity that will be provided by renewable sources, mainly wind farms.</i> ” |
| ESB | Commercial State body – Public authority who will construct the Laois-Kilkenny Reinforcement Project https://www.esb.ie/who-we-are/corporate-governance/governance-codes-and-group-policies “ <i>ESB Networks constructs and maintains the transmission system.</i> ” https://www.esbnetworks.ie/who-we-are/our-networks |
| Laois County Council | Local Planning Authority – Public authority for Local Planning decisions. |

X. Supporting documentation

| | |
|----------|--|
| Annex 1 | Extracts from various reports / Maps / letters To reduce the quantity of documentation, relevant extracts from key documents have been included in this Annex. Full documents can be provided if required. |
| Annex 2 | Original route selection map EirGrid map Project: "Loughteeg 400/110kV Project" Drawing title "Preliminary route selection" Drawing Number: PE687-D261-002-001-001 Date: 21.07.2009 |
| Annex 3 | Department of the Environment, Community and Local Government, Guidelines for Planning Authorities and An Bord Pleanála on carrying out Environmental Impact Assessment ⁴⁴ March 2013. (Appendix 2 of this document contains a summary of the planning legislation for Environmental Impact Assessment in place at that time). |
| Annex 4 | Planning Inspector's report – Laois-Kilkenny Reinforcement Project |
| Annex 5 | FC presentation to the oral hearing November 2013 |
| Annex 6 | ABP Minutes of 5 th August 2009 meeting – annotated by EirGrid ⁴⁵ |
| Annex 7 | Irish Wind Generation Development – National Grid/EirGrid Joint Study Technical Report, Date-30 th January 2013 |
| Annex 8 | AIE from Department of Arts heritage and Gaeltacht re. GRID25 and Gate3 |
| Annex 9 | S.I. No. 419/2012 ⁴⁶ - European Union (Environmental Impact Assessment) (Planning and Development Act, 2000) Regulations 2012 |
| Annex 10 | 14th April 2014 – An Bord Pleanála Direction – grant of planning permission ⁴⁷ |
| Annex 11 | Extract from ABP Greenwire pre-consultation file – meeting 7 th March 2013 |
| Annex 12 | EirGrid- MNorton final statement oral hearing |
| Annex 13 | Planning and Development Act – Section 50B- |
| Annex 14 | Grace and B – threat of legal costs |
| Annex 15 | POW – threat of legal costs |


Fand Cooney

January 2021

Date

⁴⁴ Guidelines for Planning Authorities and An Bord Pleanála on carrying out **Environmental Impact Assessment, Department of the Environment, Community and Local Government, March 2013**

<https://www.housing.gov.ie/sites/default/files/migrated-files/en/Publications/DevelopmentandHousing/Planning/FileDownload%2C32720%2Cen.pdf>

⁴⁵ <http://www.pleanala.ie/documents/letters/VCO/LVC0035A.pdf>

⁴⁶ <http://www.irishstatutebook.ie/eli/2012/si/419/made/en/print>

⁴⁷ <http://www.pleanala.ie/documents/directions/VA0/SVA0015.pdf>