Re: Reply to the e-mail received from EU Commission on 15th March 2013 and 13th March in relation to request access to documents under Regulations 1367/2006 and 1049-2001 entitled "CAULFIELD - Gestdem 2012/4179 and 2013/1279"

To: Marija Mrdeza, Policy Officer, European Commission

From: Joseph Caulfield, Rathrobin, Mountbolus, Co. Offaly, Ireland

Date: 17/3/2013

1. BACKGROUND

As pointed out in my previous correspondence with yourselves, I lodged on the 20th August 2012 a formal request for information under Regulation 1049/2001 as part of my Rights under the Aarhus Regulation 1367/2006:

1. All **"environmental information"** held by Commission for Electricity Projects E149, E150, E151, E152, E153, E154, E155, E156 & E291 as listed in http://ec.europa.eu/energy/infrastructure/consultations/doc/20120725_electricity_with_marked_changes_wip.pdf dated the 27th of July 2012. Please refer to Regulation 1367 of 2006 for the definition of "environmental information".

2. Copies of the processes and procedures which will be used to evaluate the above projects.

3. Details of the membership (including qualifications) of the team who will be evaluating the projects

4. Details of how the public consultation will be incorporated into the decision process e.g. weighting factors.

To date I have received none of the above. Why? In this regard I would like to point out that the area in which I and the other citizens supporting me on this search for 'good administration' live in, namely the Irish midlands, is to be covered in not just hundreds, but potentially thousands of giant wind turbines of 185 m in height. All in order to fulfil your plans in this regard, to which I am not to be informed about, not to be allowed to participate in. Yet I and the other in the midlands are required to pay an enormous cost, both financially and in respects of the natural environment around us.

2. THE LEGAL CONTEXT

Let us be very clear about the legal context of what is going on, starting with the Lisbon Treaty, in which the Charter of Fundamental Rights defines my 'Right to Good Administration'.

> *Every person has the right to have his or her affairs handled impartially, fairly and within a reasonable time by the institutions, bodies, offices and agencies of the Union.*

1. Rights include:
- to be heard
- access to personal files
- reasons for decisions

2. This right includes:
a) the right of every person to be heard, before any individual measure which would affect him or her adversely is taken;
b) the right of every person to have access to his or her file, while respecting the legitimate interests of confidentiality and of professional and business secrecy;
c) the obligation of the administration to give reasons for its decisions.

I would also point out that a further examination of the text of the Lisbon Treaty shows that 'transparent' and 'transparency' are mentioned no less than six times[1].

Furthermore, it is not as if yourselves in the Commission have not been warned before about this behaviour in relation to **your** renewable energy programme – you have. If we consider the "Final report of the Advisory Group on the Energy Roadmap 2050", SEC 2011 (1569)[2], the first section of this document is clear:

- *"Some members were concerned about the extent to which detailed modelling and underlying assumptions would be understood by the wider public, who would have to bear the costs of the decarbonisation transition, particularly if Europe's leadership in climate change was not matched by similar measures from other major economies. The price implications for consumers would need to be communicated and part of the role of the Roadmap should be to engage with the public on the full costs and implications of the radical transformation that decarbonisation implies".*

These considerations then lead to the following recommendation:

- *"Recommendation Three: The Commission should set out in the Roadmap how the outcomes will be presented transparently to the wider public to ensure full engagement and understanding of the necessary tradeoffs".*

Unfortunately it is not simply a question of yourselves in the Commission ignoring not only the Lisbon Treaty, and recommendations of Advisory Groups, but also of yourselves operating outside of the specific legal framework.

Under Regulation 1367/2006, the definition of a plan or programme is defined in Article 2(1)(e) as:

(e) 'plans and programmes relating to the environment' means plans and programmes,

---

[1] 11.2 TEU, 15.3 TFEU, 42 Charter, 21a.3 TFEU, 21a.3 TFEU, 15.3 TFEU
Council meets in public, 12.8 TEU, 16.8 TEU, in the Commission, Declaration N° 10

[2] http://ec.europa.eu/energy/energy2020/roadmap/doc/sec_2011_1569_1.pdf

(i) which are subject to preparation and, as appropriate, adoption by a Community institution or body;
(ii) which are required under legislative, regulatory or administrative provisions; and
(iii) which contribute to, or are likely to have significant effects on, the achievement of the objectives of Community environmental policy, such as laid down in the Sixth Community Environment Action Programme, or in any subsequent general environmental action programme.

If we consider the relevant consultation, it is even entitled Energy Infrastructure[3], plus it was accompanied by Com (2010) 677[4]: "Energy infrastructure priorities for 2020 and beyond - A Blueprint for an integrated European energy network". In no uncertain terms, it fell under the definition of Article 2(1)(e) of the Aarhus Regulation above.

Article 9 of the Aarhus regulation specifies precise legal requirements, which apply to such plans and programmes:

1. *Community institutions and bodies shall provide, through appropriate practical and/or other provisions, early and effective opportunities for the public to participate during the preparation, modification or review of plans or programmes relating to the environment when all options are still open. In particular, where the Commission prepares a proposal for such a plan or programme which is submitted to other Community institutions or bodies for decision, it shall provide for public participation at that preparatory stage.*

2. *Community institutions and bodies shall identify the public affected or likely to be affected by, or having an interest in, a plan or programme of the type referred to in paragraph 1, taking into account the objectives of this Regulation.*

3. *Community institutions and bodies shall ensure that the public referred to in paragraph 2 is informed, whether by public notices or other appropriate means, such as electronic media where available, of:*

    (a) the draft proposal, where available;
    (b) the environmental information or assessment relevant to the plan or programme under preparation, where available; and
    (c) practical arrangements for participation, including:
    (i) the administrative entity from which the relevant information may be obtained,
    (ii) the administrative entity to which comments, opinions or questions may be submitted, and
    (iii) reasonable time-frames allowing sufficient time for the public to be informed and to prepare and participate effectively in the environmental decision-making process.

4. *A time limit of at least eight weeks shall be set for receiving comments. Where meetings or hearings are organised, prior notice of at least four weeks*

[3] http://ec.europa.eu/energy/infrastructure/consultations/20120620_infrastructure_plan_en.htm

[4] http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=SPLIT_COM:2010:0677(01):FIN:EN:PDF

shall be given. Time limits may be shortened in urgent cases or where the public has already had the opportunity to comment on the plan or programme in question.

5. *In taking a decision on a plan or programme relating to the environment, Community institutions and bodies shall take due account of the outcome of the public participation. Community institutions and bodies shall inform the public of that plan or programme, including its text, and of the reasons and considerations upon which the decision is based, including information on public participation.*

In my letter to you of 4th March, it was made very clear that no attempt was made to comply with Articles 9(1), 9(2), 9(3) and 9(4). It seems once again, we have an imminent global planetary emergency and the overwhelming evidence is that none of the above, from the Lisbon Treaty, through to the recommendations of the Advisory Group and the Aarhus Regulation itself, are in the least bit relevant as to how the EU Commission goes about its administration. 'Carte blanche' applies, in particular, Article 2 of the Lisbon Treaty (TEFU), see below, has been suspended:

- *"The Union is founded on the values of respect for human dignity, freedom, democracy, equality, **the rule of law** and respect for human rights, including the rights of persons belonging to minorities. These values are common to the Member States in a society in which pluralism, non-discrimination, tolerance, justice, solidarity and equality between women and men prevail".*

3. ENVIRONMENTAL INFORMATION

Environmental information was requested back in August 2012, which has not been provided and clearly there is intent at the highest level in the EU Commission, from the Secretary General down, not to provide it, despite the presence of the binding legal framework. I already pointed out in my letter of the 4th March 2013 that the definition of environmental information is very broad and includes under Article 2(d) of Regulation 1367/2006:

- "Factors, such as substances, energy, noise and radiation, and activities or measures, including administrative measures, environmental agreements, policies, legislation, plans and programmes, affecting or likely to affect the elements of the environment within the scope of subparagraph (a) above, and cost-benefit and other economic analyses and assumptions used in environmental decision-making".

I also pointed out that under Article 1(2) of Regulation 1367/2006:

- "In applying the provisions of this Regulation, the Community institutions and bodies shall endeavour to assist and provide guidance to the public with regard to access to information, participation in decision-making and access to justice in environmental matters".

In this regard I consider your correspondence to date with myself since the 4th March 2013 to be yet another breach of the regulations. In particular, after seven months it was determined that filled in questionnaires existed; as I stated on the 4th March, in writing which was clear and to the point, but unfortunately which I once again have to spell out below:

- *"If we consider the blank questionnaire provided, then there is very little of the questionnaire, if indeed any at all, which does not fall under definition of environmental information. Again with reference to the fact that one does not have to be qualified as a Senior Judge, those filled in questionnaires for the projects concerned, should have by right been provided on the first occasion of requesting this information".*

I therefore consider your actions in which you stated the below, to be nothing short of deliberate obstruction and yet another example of your obvious contempt for the legal framework, which applies to you:

- *"Your letter to the Secretariat General and DG ENER of 4 March 2013 (concerning the filled in questionnaires with regard to projects in question), has been registered as new "Access to document" request (reference 2013/1279)".*

Furthermore, in relation to your statement:

- *As your new request also refers to other topics apart the filled in questionnaires, we would kindly ask you to specify all documents you are looking for concerning your new request for "Access to documents".*

If we go back to my original request of the 20th August 2012, in which you so clearly failed to comply with the legal framework in connection with the request, what was requested included in Part 1:

- *All "environmental information" held by Commission for Electricity Projects E149, E150, E151, E152, E153, E154, E155, E156 & E291.*

To repeat once again, to date I have been provided with absolutely nothing in relation to the above, neither am I clairvoyant and would be, as you are asserting above, in a position to know the exact documents and their numbers that the Commission would have generated in connection with the above. That is why the regulations, which apply to you, are written in the manner of Article 1 (2) of the Aarhus Regulation. It is up to you to provide the relevant environmental information held in conjunction with the above programmes, whether that be filled in questionnaires, minutes of meetings with developers, telephone discussion notes, agreements with Member States and their administrations to promote these projects, etc. If you have a problem with this, which clearly to date you have, then I can refer you to Article 15 (1) of the Lisbon Treaty:

- "In order to promote good governance and ensure the participation of civil society, the Union institutions, bodies, offices and agencies shall conduct their work as openly as possible".

Although the evidence to date is that this too has been suspended, because of the imminent planetary emergency.

4. THE EU COMMISSION AND ITS RENEWABLE ENERGY PROGRAMME IN IRELAND

The failures to comply with the legal framework highlighted above are simply symptoms of a bigger problem in which the EU Commission has decided to suspend the rule of law in order to implement its renewable energy programme in Ireland. The process of Strategic Environmental Assessment is not only a key element in democratic accountability, but it ensures that:

- The environmental objectives of the programme are clearly defined.
- The alternatives to achieve those objectives are also defined.
- The likely state of evolution of the environment without implementation of the plan or programme is assessed.
- The impacts of the programme on the environmental factors, such as population, human health, biodiversity, landscape, climate, etc, are assessed.
- The appropriate mitigation measures are identified in relation to the impacts above.
- The programme is monitored for unforeseen adverse effects during its implementation phase.

In other words, it is about proceeding with due care and attention, ensuring that the programme is appropriate and proportionate. However, none of this was completed in Ireland for the renewable energy programme[5], a position which led the UNECE Aarhus Compliance Committee to accept Communication ACCC/C/2010/54 and initiate a compliance investigation.

In their written response to the UNECE Committee's questions, the EU Commission's senior lawyers, Peter Oliver and Katarzyna Herrmann, showed complete disrespect for the proceedings[6] by both engaging in 'Ad Hominem' and essentially lying to the Committee that Ireland was in compliance with the Directive on Strategic Environmental Assessment, when there was already a legal ruling that none had been completed for the renewable energy programme.

As regards the Compliance Committee meeting itself in September, the senior lawyer in the EU Commission, Mr Eric White, again showed completed disrespect in his opening statement[7], again essentially lying about the compliance of the renewable energy programme with the Directive on Strategic Environmental Assessment and going as far as to say with regard to the Irish citizen's rights to be informed in Point 12 of his opening statement:

---

[5] http://www.ocei.gov.ie/en/Decisions/Decisions-of-the-Commissioner/Mr-Pat-Swords-Department-of-Communications,-Energy-and-Natural-Resources.html

[6] See documentation 28.06.2011:
http://www.unece.org/env/pp/compliance/Compliancecommittee/54TableEU.html

[7] See documentation of 26.09.2011:
http://www.unece.org/env/pp/compliance/Compliancecommittee/54TableEU.html

- *"Mr Swords' complaint relates more to the fact that Ireland has not collected and disseminated the information that he would like to see collected and disseminated – information that would undermine the case for renewable energy projects and support his views. The European Union does not believe that the Convention or EU law creates any obligation to collect and disseminate information that a member of the public would like to see disseminated. Article 5 of the Convention leaves significant discretion to authorities by using words such as "adequate" and "sufficient". In addition, it focuses on information on threats to the environment and does not require information to be collected on comparative costs".*

A point which makes a complete mockery of his obligations in relation to the definition of environmental information in the Aarhus Convention and indeed his own obligations under Articles 4(1) and 5 (1) of Regulation 1367/2006.

I could also refer to the on-going refusal of the EU and the Irish State to comply with the findings and recommendations of the UNECE Compliance Committee in relation to the non-compliance of the EU's renewable energy programme with Article 7 of the Aarhus Convention, see for instance Parliamentary Questions at the Annex to this document and the on-going Judicial Review in the Irish High Court.

As mentioned in my letter of the 4th March 2013, there is an on-going Complaint 1892/2012/VL at the EU Ombudsman, the EU Commission is currently being investigated in relation to:

- "*The Commission has failed to ensure that the Republic of Ireland carried out a strategic environmental assessment pursuant to Directive 2001/42/EC, prior to adopting its National Renewable Energy Action Plan based on Directive 2009/28/EC".*

Again it is highly disturbing that in their reply to the EU Ombudsman of the 4th December 2012[8], the Commission once again lied in relation to Strategic Environmental Assessment of wind energy in Ireland.

- *"Each county in Ireland is required to undertake a **county development plan.** The development plan sets the framework for the development of the local authority's area over its six year lifespan. Among other things, local authorities are required to have regard to the Wind Energy Development Guidelines developed by the Department of Environment in putting together their county development plan. Strategic environmental assessments of the likely environmental effects of implementing the plans are undertaken".*

The bottom line is that these county development plans contain no environmental assessment of the wind energy to be developed. The information as required was never generated, the public were never informed and the mitigation measures never developed, while the monitoring of the existing installed wind energy for unforeseen adverse environmental effects never occurred[9].

[8] ENER/C 1/JB// 0(2012)1500957

[9] See for instance for County Laois: http://www.laois.ie/media/Media,534,en.pdf
See top of page 30: http://www.laois.ie/media/Media,7823,en.pdf
Absolutely no mention of a Strategic Environmental Assessment at all:
http://www.laois.ie/media/Media,6702,en.pdf

5. MEETING WITH EU COMMISSION

As regards the proposed meeting mentioned in your correspondence, I would like to point out that there is growing outrage in the Irish midlands in relation to the whole manner in which this programme is being forced upon the people there without them being informed, being allowed to participate in the decision-making and having access to legal procedures to challenge its provisions[10]. I fail to see the reason why you are contacting me in this manner for a meeting, for which there is no defined agenda, there is no clarification on who will be attending and there is no plan whatsoever as to what will be the outcome going forward.

The bottom line is that you are required by the legal framework to engage with the public in a proper manner, such as I have outlined in the previous sections, in particular given the huge scale of the developments proposed, which will radically alter the whole fabric of the region. You have failed to do this and as a result there is naturally growing outrage in the region. I do not see what benefit a meeting with no agenda, no defined objectives, no definition of who will attend, no outline of what steps will be taken following the meeting, etc, will achieve. While I believe strongly in active citizenship and public participation, what is currently proposed is neither professional nor inclusive of the public engagement and legal compliance which is required. When such matters are dealt with in a professional manner, which includes the provision of the environmental information which was requested over seven months ago, then I am of course available to meet.

Yours truly,

Joe Caulfield

Annex – Parliamentary Questions

Question for written answer E-008123/2012
to the Commission
Rule 117
Struan Stevenson (ECR)
Subject: Future of the EU's renewable energy policy

The answer given to Written Question E-005651/2012 by Commissioner Potočnik on behalf of the Commission stated that findings of the Aarhus Convention Compliance Committee were provisional.

Now that this committee has ruled that the EU has failed in its commitments to transparency and public participation in renewable energy policies, what steps will the Commission be taking to ensure that a proper regulatory framework is put in place for implementing National Renewable Energy Action Plans (NREAPs), which have now been determined as legally unsound with regard to the binding requirements of the Convention?

[10] http://www.irishtimes.com/news/environment/outrage-at-plans-for-2-300-wind-turbines-1.1317334

E-008123/2012
Answer given by Mr Potočnik
on behalf of the Commission
(7.11.2012)

The Commission has taken due note of the findings and recommendations of the Aarhus Convention Compliance Committee (ACCC) concerning compliance by the European Union with provisions of the Convention in connection with the renewable energy programme in Ireland[11].

These findings constitute the final findings of the ACCC, but they have not been endorsed by the Parties to the Aarhus Convention yet.

The ACCC's final findings recommend "clear instructions" for implementing Article 7 of the Aarhus Convention.

The Commission intends to issue such clear instructions to Member States should it request them to submit an amended National Renewable Energy Action Plan[12]. In the same way, the Commission will make Croatia aware of these requirements as regards its obligation to submit a National Renewable Energy Action Plan following its accession to the EU as of 1 July 2013.

[11] Ref. ACCC/C/2010/54

[12] As provided by Article 4(4) of Directive 2009/28/EC on the promotion of the use of energy from renewable sources, OJ L 140, 5.6.2009