

# **How the massive costs associated with the Irish and EU Renewable Energy Programme have been inflicted on the Citizen in breach of law - Current and potential legal action against the EU and Irish Authorities**

By: Pat Swords BE CEng FIChemE CEnv MIEMA  
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*"The state exists for man, not man for the state. The same may be said of science. These are old phrases, coined by people who saw in human individuality the highest human value. I would hesitate to repeat them, were it not for the ever recurring danger that they may be forgotten, especially in these days of organisation and stereotypes." Albert Einstein.*

## **Abstract:**

This essay addresses the legal validity of the Republic of Ireland's renewable energy programme, which has at its aim to generate some 40% of Ireland's electricity from wind. A legal challenge to this programme has already resulted in August 2012 in a ruling by the United Nations, in that the implementation of the EU's 20% renewable energy by 2020 programme did not comply with its Convention on human and environmental rights. The necessary steps of assessment and democratic accountability defined in this Convention, a binding part of EU law, having been bypassed.

Leading on from this ruling, there is currently a Judicial Review taking place in the Irish High Court to quash the Irish renewable energy programme, until such time as the legally required environmental assessments and public participation has been completed. Despite these legal failures having been repeatedly brought to their attention for over three years, the EU and Irish administrations have steadfastly refused to ensure compliance with the necessary scientific assessments of the programme. One can however, complete one's own assessment of this programme. The result is sobering, a capital cost of some €30 billion, in which the bulk of the infrastructure will be life expired in 15 years and the environmental benefits, if they occur at all, only amount to €5 million per annum. Clearly, other measures at far less cost, both financially and environmentally, could have been implemented to achieve what is a very poor benefit.

*Da mihi facta, dabo tibi ius*; is a legal principle based on Roman law; parties should present the facts of a case, while the judge rules on the law. In reality when the renewable programme is subjected to proper scientific assessment and the cost, benefit analysis defined, what is apparent is that a fundamental principle of EU and International law has been violated; namely the Principle of Proportionality.

The Principle of Proportionality requires each decision and measure to be based on a fair assessment and balancing of interests, as well as on a reasonable choice of means. Simply put, the extent of the action must be in keeping with the aim pursued. This Principle plays a central role in the case law of the European Court of Justice, regardless of whether the case involves agriculture, free movement of goods, citizenship, etc. Indeed, when applying the general principle of proportionality, the European Court of Justice frequently states that the principle requires an act or measure to be "suitable" to achieve the aims pursued, or it rather concludes that a decision is disproportionate because it is "manifestly inappropriate in terms of the objective which the competent institution is seeking to pursue".

Clearly, the programme is disproportionate. Yet the evidence is overwhelming, the necessary procedures of assessment and democratic accountability were deliberately subverted by EU and Member State officials. There is no point in reasoning with this system of governance. Such reason or logic was never used to reach the point, where we are today with this programme. Simply put, the manmade contribution to on-going global warming is not a planetary emergency. However, the bureaucracy has to be kept turning, of which rule number one has always been:

- “Maintain the problem at all costs! The problem is the basis of power, perks, privileges, and security”.

To this of course must be added that wealth and resources must be diverted to vested support groups and away from those, which are considered political opponents.

So as a result, huge costs have been passed on to the consumer, who has his rights related to participation in the decision-making violated. Ireland initially rejected the EU’s Lisbon Treaty in a referendum in 2008, but reversed this in 2009, after which the Treaty was adopted. This Treaty made legally binding the Charter of Fundamental Rights, which included the Right to Good Administration and the Right to have damages made good.

With respect to the latter, this is established in European case law since 1991, when Senor Francovich won his case, in relation to Italy failing to implement EU legislation for the protection of employees in the event of insolvency of the employer. The European Court found the Italian State liable to financially compensating the workers for the breach in legislation. This principle of Member State liability has been well established in further cases since taken.

So why should citizens be carrying huge financial costs for a completely inappropriate programme, which was implemented in a dictatorial fashion in breach of their rights? Who watches the watchman? If citizens do not seek to exert their rights through the courts, this ideologically and illegally driven programme will impose more costs and restrictions upon them. If they chose to accept this then so be it, but for those who consider differently, the emerging legal landscape is highly interesting

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## 1. INTRODUCTION

How much does it cost and why are we doing it? If you were involved in a major purchase, such as house, car or business, you would have that answer. If you are being forced to pay for something, such as through taxation, you would expect to have a say in it; after all because of this principle, way back in 1773, they had a big 'tea party' in Boston. Yet in late 2012, the European Parliament's energy committee was assessing proposals to expand the EU's current 20% renewable energy by 2020 target. Their draft report on "Current challenges and opportunities for renewable energy on the European energy market 2012/2259(INI)", even states in Point 25 with regard to the financial support structures for renewable energy:

- "Emphasises that the Member States currently use almost 170 different types of promotion mechanism; points out that this support has led to healthy growth but that some of the promotion systems are very costly and that, in some cases, a considerable financial burden has been placed on consumers without their having had a choice in the matter".

In Ireland, our National Renewable Energy Action Plan (NREAP) to implement this EU target requires installation of some four thousand wind turbines (7,145 MW), along with a doubling of our high voltage grid by an additional 5,000 km of lines. This represents a capital investment of some €30 billion<sup>1</sup>. So why is this required? In particular as when the wind strength is below our average wind speed, none of it works; we just rely on our existing power stations. So why are we doing this?

If one was to rely on official documentation as to the justification for this, one would be sorely disappointed, it simply doesn't exist. This is a whole subject matter in itself, which has been actively campaigned by the author, an Irish Chemical Engineer and specialist in Environment, Health and Safety. Indeed the United Nations Economic Commission for Europe's (UNECE) Aarhus Convention Compliance Committee found in his favour in August 2012<sup>2</sup> in relation to a compliance investigation of the EU's renewable energy programme. The legal Committee ruling that the EU failed to comply with this Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters<sup>3</sup> and recommending that:

- The EU is required to put in place the necessary measures, such that they ensure that the arrangements for public participation in a Member State 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 the Convention are met, in relation to reasonable time-frames, allowing for

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<sup>1</sup> The cost of the programme has never been quantified by the authorities, who simply failed to fill in Section 5.3 of the EU's NREAP template, which contained a Table on expected greenhouse gas savings, expected costs and expected job creation. However, the installed cost of wind energy is about €1.8 million per MW onshore, €4 million per MW offshore, the Gird programme is estimated at €4 billion, plus additional interconnectors to the UK at €0.6 billion, smart meters, new fast response power stations, etc.

<sup>2</sup> [http://www.unece.org/fileadmin/DAM/env/pp/compliance/C2010-54/Findings/ece mp.pp c.1 2012 12 eng.pdf](http://www.unece.org/fileadmin/DAM/env/pp/compliance/C2010-54/Findings/ece_mp.pp_c.1_2012_12_eng.pdf)

<sup>3</sup> <http://www.unece.org/env/pp/introduction.html>

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.

Unfortunately, the Irish and EU Administrators failed to implement this ruling, despite the Convention being a binding part of EU law, so leave for a Judicial Review of the renewable programme was granted in the Irish High Court on 12<sup>th</sup> November 2012<sup>4</sup>. The reliefs sought are to declare the programme *ultra vires* and to prohibit the granting of any further planning permissions and funding arrangements until such time as the legally required environmental assessments and public participation in decision-making have been completed.

The Judicial Review hearing is scheduled for the 15<sup>th</sup> January 2013. Under the rules of the High Court, the State Solicitor had three weeks to prepare and serve a Statement of Opposition to the grounds already submitted on the 12<sup>th</sup> November. Six weeks later, no sign of that documentation is to be seen.

## **2. SCIENTIFIC ASSESSMENT – CO<sub>2</sub> SAVINGS**

While the Convention requires that the public be provided with ‘the necessary information’, EU law is more specific in that a detailed Strategic Environmental Assessment<sup>5</sup> has to be completed for such a programme. This is important; such an assessment is inherently linked to quantification. The detailed environmental report has to address the objectives of the plan or programme, the alternatives to achieve them, the likely state of the environment without implementation of the programme, the impacts and mitigation measures and finally monitoring of the programme for unforeseen adverse impacts. Simply put, it is about proceeding with care.

That there are considerable impacts associated with wind energy is without question, such as impacts on landscape, flora and fauna, economics, noise and associated health impacts, etc. However, all of these are glossed over or ignored by the authorities in the quest for the ‘holy grail’; fossil fuel and greenhouse gas savings. However, what happens when one tries to actually quantify this benefit? One comes up against a brick wall.

Let me be very clear, this brick wall is there for a purpose. So long as one can approve wind energy projects and associated funding arrangements on statements of nothing but opinion, this programme will continue. The devil is of course in the detail; such as what tonnes of carbon dioxide are to be saved, what the environmental significance of that tonnage is and what alternatives are there to achieve it. One would think that this would be a relatively easy question to answer. After all, some 100,000 MW of wind energy is now installed in the EU, representing a capital investment of the order of €170 billion. Surely there is an engineering report out there justifying this? Unfortunately this is an assumption that is very wide of the mark, instead one has to get behind the brick wall and construct the figures oneself.

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<sup>4</sup> <http://www.irishexaminer.com/archives/2012/1221/business/engineer-to-challenge-governmentaposs-renewable-energy-programme-217634.html>

<sup>5</sup> Directive 2001/42/EC: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2001:197:0030:0037:EN:PDF>

As far as the EU and Member State authorities are concerned, if 1 MWh of wind energy is placed on the grid, then an equivalent 1 MWh of emissions from a fossil fuel power station is displaced. No allowance is made for the inefficiencies, which occur on the grid, as the power stations have to compensate for this highly intermittent and variable wind energy input. In July 2012, the Energy and Climate Change Committee of the UK Parliament took evidence on; "The Economics of Wind Power"<sup>6</sup>. It is important to consider the submission from Sir Donald Miller F.R Eng, FRSE, who was Chairman of the SSEB, later Scottish Power from 1982 to 1992 (Wind 13).

- "The assumption that each MWh of electricity generated from wind saves the equivalent in CO<sub>2</sub> emissions from fossil fuel power stations would not be supported by any engineer with experience of operating power plant. The considerably lower efficiency of the back-up thermal plant running at part loads together with the additional losses from frequent deloading and reloading as the wind strength varies, all consume additional fuel. The jury is still out on the exact implications of this but there is accumulating evidence from analysis of actual system operations both in the USA and more recently for the Irish Grid that high wind penetrations save little or negligible emissions of CO<sub>2</sub> and can in some circumstances actually lead to increases".

One can add to the above the sheer audacity of the EU and Member State public authorities, who in their environmental reports on the programme<sup>7</sup> ignore the inefficiencies which are induced on the grid, but in their technical reports and funding arrangements allow for the additional 'balancing' costs due to the power plants having to operate more inefficiently. For instance in Ireland, the Renewable Energy Feed In Tariff (REFIT)<sup>8</sup> provides a price of €68 per MWh to wind farm operators and an additional €10.21 in balancing payment to the electricity companies, who are obliged to take their output.

It is also interesting to point out that when REFIT was first sent to the EU for approval of State Aid for Environmental Protection in 2006, it was claimed, based on industry standard figures, that 1.9 million tonnes of CO<sub>2</sub> would be saved per 1,000 MW of wind energy installed<sup>9</sup>. By the end of 2011, the total installed capacity of wind energy in the Irish Republic was 1,631 MW, which rose to 2,000 MW by the end of 2012. So clearly even by 2011, we should have been saving 3 million tonnes per annum of CO<sub>2</sub> as a result of this programme. Yet no verified emissions data actually exists<sup>10</sup>.

Can it be properly calculated or estimated? The local power transmission operator in Ireland, Eirgrid, publishes data that show wind-power's input to the grid sampled at

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<sup>6</sup> <http://www.publications.parliament.uk/pa/cm201213/cmselect/cmenergy/writev/517/contents.htm> and repeated again at: <http://www.parliament.uk/documents/lords-committees/eu-sub-com-d/energy/energyevidence.pdf>

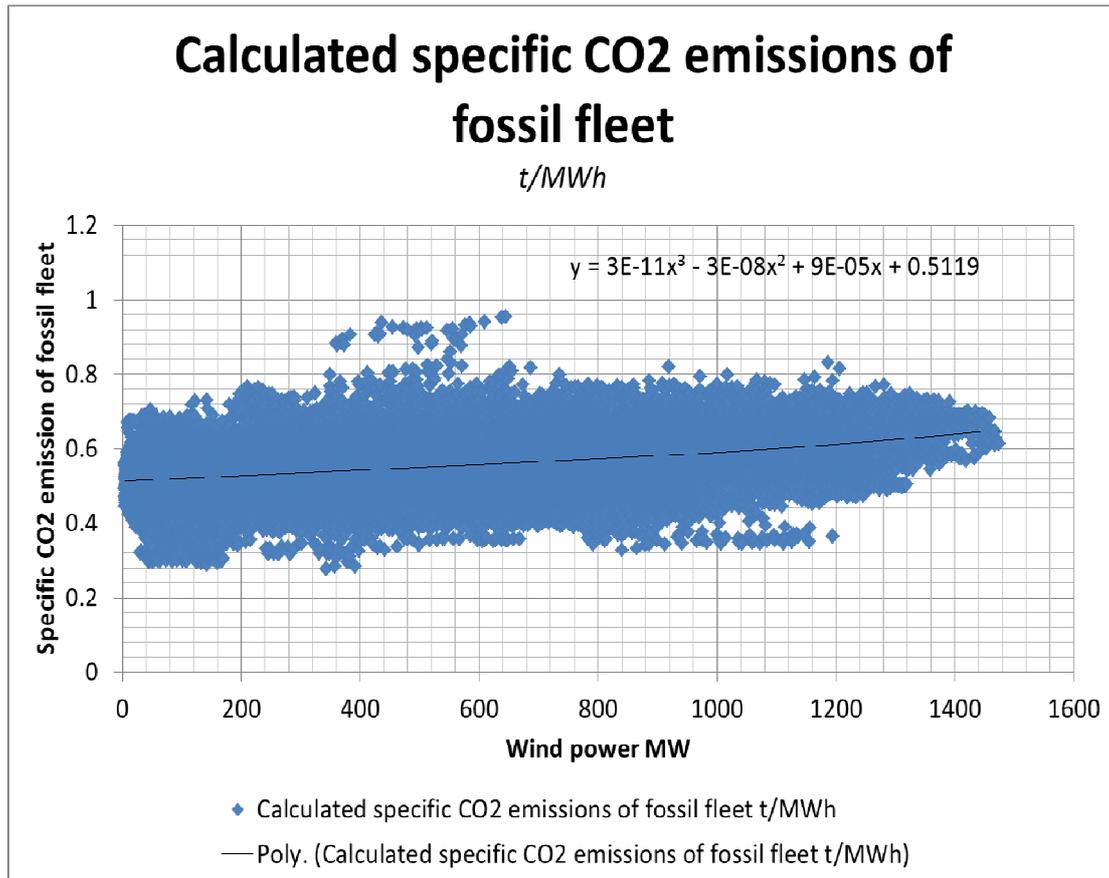
<sup>7</sup> See for instance Section 10 of the NREAP progress reports: [http://ec.europa.eu/energy/renewables/reports/2011\\_en.htm](http://ec.europa.eu/energy/renewables/reports/2011_en.htm)

<sup>8</sup> <http://www.dcenr.gov.ie/Energy/Sustainable+and+Renewable+Energy+Division/REFIT.htm>

<sup>9</sup> Part III.10 Supplementary Information Sheet on environmental protection aid

<sup>10</sup> [http://www.unece.org/fileadmin/DAM/env/pp/compliance/C2010-54/Correspondence%20with%20communicant/frCommC54Annex\\_Reply\\_from\\_DCENR\\_5Sept2011.pdf](http://www.unece.org/fileadmin/DAM/env/pp/compliance/C2010-54/Correspondence%20with%20communicant/frCommC54Annex_Reply_from_DCENR_5Sept2011.pdf)

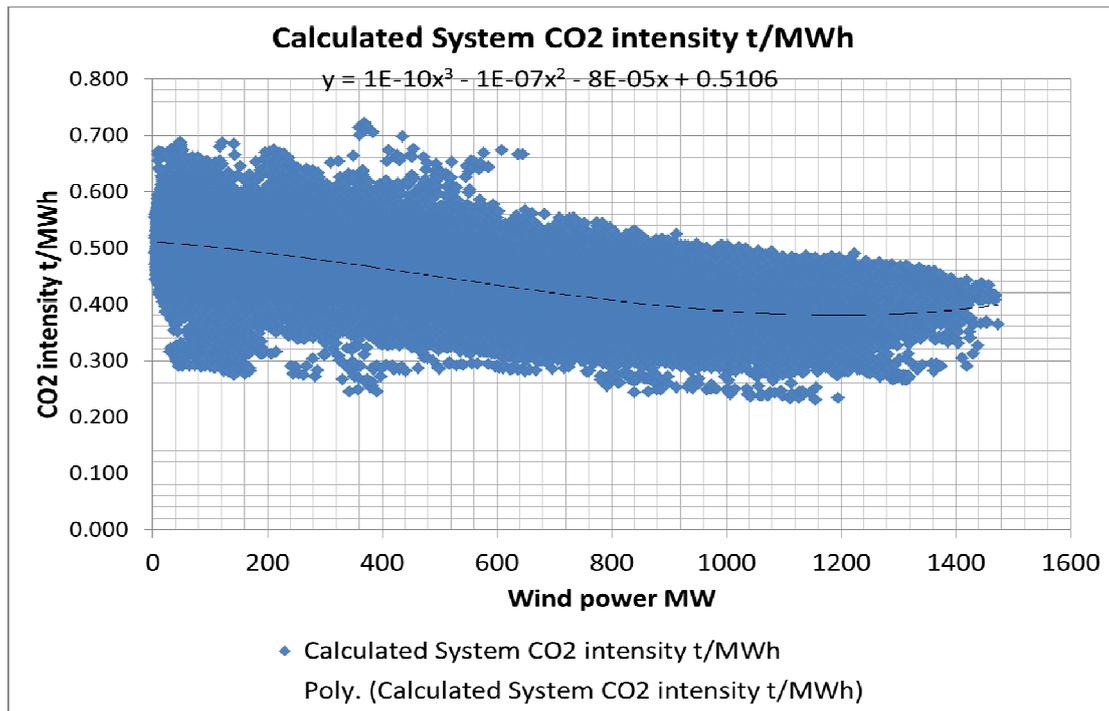
15 minute intervals<sup>11</sup>. As an island with limited hydro-power capacity for balancing wind generation, it is possible to analyse the performance of thermal plant on the grid as input from the wind power varies. Eirgrid has also modelled emissions from thermal power plant based on theoretical loads, an exercise which, though less precise than measuring fuel consumption, provides useful data. Analysis of Eirgrid's data for 2011 shows that grid emissions started to rise again when the input from wind power exceeds 1,200 MW, which is really quite alarming in the context of a national plan (NREAP) calling for a total of 7,145 MW<sup>12</sup>. In other words, a point had been reached, where the power station inefficiencies were cancelling out the input of the carbon free wind energy.



**Figure 1: Emissions from fossil-fuelled power stations on the Irish grid rise as the input from wind power rises. Note that if EU and Member State claims were correct, the graph would be a horizontal line – there would be no increase in fuel consumption (or emissions) as wind-generated input increases.**

<sup>11</sup> <http://www.eirgrid.com/operations/>

<sup>12</sup> Such analysis was performed separately by Hugh Sharman, Denmark and by Fred Udo, Holland.



**Figure 2: Overall emissions intensity of the Irish grid as a function of the level of input from wind power. Note how emissions start to rise when wind power input exceeds 1,200 MW.**

An even more in-depth analysis was completed by Joe Wheatley<sup>13</sup>, an Irish research physicist<sup>14</sup>, as part of a submission to the UK House of Lords Sub-committee on Energy Costs: "EU energy: decarbonisation and economic competitiveness". Essentially when one allows for the inefficiencies induced on the grid, as best as can be estimated with the data now available, wind power in 2011 saved 1.1 million tonnes of CO<sub>2</sub>. However, this effectiveness is being reduced as more wind power, i.e. greater penetration, is added to the grid. Yet this phenomenon was known scientifically well in advance of the EU Commission developing their 20% renewable energy target. In this context it has to be pointed out that in 2004, Eirgrid produced an engineering report<sup>15</sup> on the impact of wind energy and its intermittency on the economics of operation of conventional plant. This concluded that:

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

The report recommended that the proposed wind energy programme not be proceeded with given the other far more cost effective alternatives available for carbon abatement. It was ignored.

So instead of 3 million tonnes of CO<sub>2</sub> savings for 2011, which was based on the claims made for REFIT approval, when we allow for the clear inefficiencies, we actually seem to have only got 1.1 million tonnes of savings and have reached a

<sup>13</sup> <http://docs.wind-watch.org/Wheatley-Ireland-CO2.pdf>

<sup>14</sup> <http://joewheatley.net/about/>

<sup>15</sup> [http://www.eirgrid.com/media/2004%20wind%20impact%20report%20\(for%20updated%202007%20report,%20see%20above\).pdf](http://www.eirgrid.com/media/2004%20wind%20impact%20report%20(for%20updated%202007%20report,%20see%20above).pdf)

point where there are limited opportunities for any additional savings. In contrast, the International Energy Agency estimated that in 2011 global CO<sub>2</sub> emissions from fossil fuel combustion reached 31,600 million tonnes<sup>16</sup>. Therefore Ireland's renewable energy programme saved 0.0035% of the total. Not a lot!

### **3. SCIENTIFIC ASSESSMENT – IMPACT OF CO<sub>2</sub> SAVINGS**

While this CO<sub>2</sub> saving of 0.0035% of global emissions is certainly not impressive, deeper analysis reveals even worse. A key legally binding principle of environmental protection is the analysis of cost, benefits and consideration of alternatives. As a result we know the impacts of pollutants, such as that of fine airborne particulates on human health, as the EU and some national governments have assessed both the cost of those impacts and the costs of reducing the concentrations of those pollutants, such as by tighter emissions standards for power plants and new vehicles.

Yet when it comes to carbon dioxide there has been almost a complete failure to properly fund and execute these vitally necessary, albeit complex, studies. We are in many respects in the dark about the external cost of carbon dioxide. To explain, the internal cost is what we pay directly, such as on our electricity bill, while the external costs does not appear as a direct charge to the consumer, but which has a cost to society as a whole, such as through environmental degradation. Obviously external costs are an absolutely key element of cost, benefit analysis and the resulting decision making.

Indeed, the Strategic Environmental Assessment has to define the environmental objectives of the plan or programme, such as tonnes of greenhouse gases to be saved, the alternatives to achieve those objectives and the likely evolution of the environment without implementation of the plan or programme. Without the information on the external costs associated with non-renewable generation, this simply cannot be completed. The 'Polluter Pays Principle', which was formally adopted through the EU's Maastricht Treaty in 1992, sets the aim that external costs should increasingly become internalised. Therefore, if mandatory targets related to renewable energy are to be implemented to reduce the external costs associated with the use of fossil energy, what are the relevant external costs and additional internal costs incurred in avoiding them? Clearly the report below, which the EU Commission was required by European law to complete by the end of 2005, was extremely important in this regard<sup>17</sup>.

- Consider the progress made in reflecting the external costs of electricity produced from non-renewable energy sources and the impact of public support granted to electricity production”.

Unfortunately this report was never completed. In his reply to a question in relation to this from Struan Stevenson MEP in 23rd March 2012<sup>18</sup>, EU Energy Commissioner Oettinger stated that as the Member States did not provide information on the externalities related to the generation of non-renewable energy, the Commission

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<sup>16</sup> <http://www.iea.org/newsroomandevents/news/2012/may/name,27216,en.html>

<sup>17</sup> Article 8 of Directive 2001/77/EC: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2001:283:0033:0033:EN:PDF>

<sup>18</sup> See Attachment 4: <http://www.epaw.org/documents.php?lang=en&article=c4>

didn't produce a separate report to deal with the above. Note: The Member States weren't required to produce this data, Article 8 of Directive 2001/77/EC was completely clear; it placed the obligation on the Commission to complete the above report. While the Commissioner didn't mention it at all, it clearly wasn't seen as important either to evaluate the impact of the considerable public support given to renewable generation. Note: For instance the electricity rate for industrial companies in Germany has trebled since 2000, primarily due to the expansion in renewable energy. Increasing numbers of jobs are being lost in manufacturing, which simply cannot carry this financial burden.

The Commissioner's reply stated that "the analysis of the attempts to internalise the external costs of energy has been the basis for several energy and climate change initiatives, including progress reports of the Commission, the 2008 Energy and Climate Package and the EU Emissions Trading Scheme itself". He then provided reference to a number of reports by the Commission. Yet none of these provide data on what is the external cost of greenhouse gas emissions. The closest one comes to this is COM (2006) 848, the Renewable Energy Road Map<sup>19</sup>, in which reference is made to in one of the figures to the "Extern-E study for the European Commission".

This research project<sup>20</sup> on the external costs of energy did produce a final report in 2005 and while it did contain good analysis of the impact of air pollution, related to the work on the EU's Clean Air for Europe (CAFE) programme, which was being completed at the same time, the chapter on global warming is, as the authors admit, characterised by "uncertainties and incompleteness inherent in these estimates"<sup>21</sup>. Instead it was decided that a 'shadow price' should be used based on "society's willingness to pay for early action against global warming". Note: The Extern-E analysis on climate change quoted extensively the work of Professor Richard Tol, a Dutch economist who was until recently employed in the Irish Economic and Social Research Institute (ESRI), who in a more recent 2009 publication on the "Economic Effects of Climate Change"<sup>22</sup> stated:

- "Projections of future emissions and future climate change have become less severe over time - even though the public discourse has become shriller".
- "The quantity and intensity of the research effort on the economic effects of climate change seems incommensurate with the perceived size of the climate problem, the expected costs of the solution, and the size of the existing research gaps. Politicians are proposing to spend hundreds of billions of dollars on greenhouse gas emission reduction, and at present, economists cannot say with confidence whether this investment is too much or too little".

In a similar article by Prof Tol, "The Social Cost of Carbon: Trends, Outliers and Catastrophes"<sup>23</sup>, his conclusion on the external cost was about \$20 per ton of carbon, which equates to \$5.5 per tonne of CO<sub>2</sub>. Yet all of this is based on the premise that

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<sup>19</sup> <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2006:0848:FIN:EN:PDF>

<sup>20</sup> <http://www.externe.info/>

<sup>21</sup> A derived damage of \$33 t/C was stated (ca. €9 t/CO<sub>2</sub>) but this could range from \$7 t/C to \$33 t/C (in 1995 prices).

<sup>22</sup> Journal of Economic Perspectives – Volume 23, Number 2, Spring 2009, Pages 29-51

<sup>23</sup> <http://www.economics-ejournal.org/economics/journalarticles/2008-25>

the UN's Intergovernmental Panel on Climate Change (IPCC) has accurate estimates on future climate trends.

Unfortunately scientific fact has long gone as a basis of decision making in the EU Commission. If one accesses the EU Commission's webpage on Climate Action<sup>24</sup>, in relation to a roadmap to a low carbon economy by 2050, this states:

- "Science tells us that all developed countries would need to reduce emissions by 80-95% in order to have a fair chance of keeping global warming below 2°C".

As Struan Stevenson MEP pointed out in the start of his letter to the EU Commissioner for Energy, there is a "current furore in relation to the EU's renewable energy and climate change targets". The scientific community does not support statements such as the above, which are nothing short of the opinions of individuals, which are not supported by facts and time and time again bear the stamp of sensationalism. Of huge concern is the blind faith we are now expected to put in the skills of a limited number of mathematical experts and their computer models (General Circulation Models). Simply put, the contribution of carbon dioxide to the earth's natural greenhouse effect is completely swamped by the presence of simple water vapour. The threat of global warming is singularly based on the principle of a feed forward effect, i.e. that if the earth's temperature increases slightly, then more water vapour will enter the atmosphere and as a result we will enter into a never ending spiral of run-away temperatures.

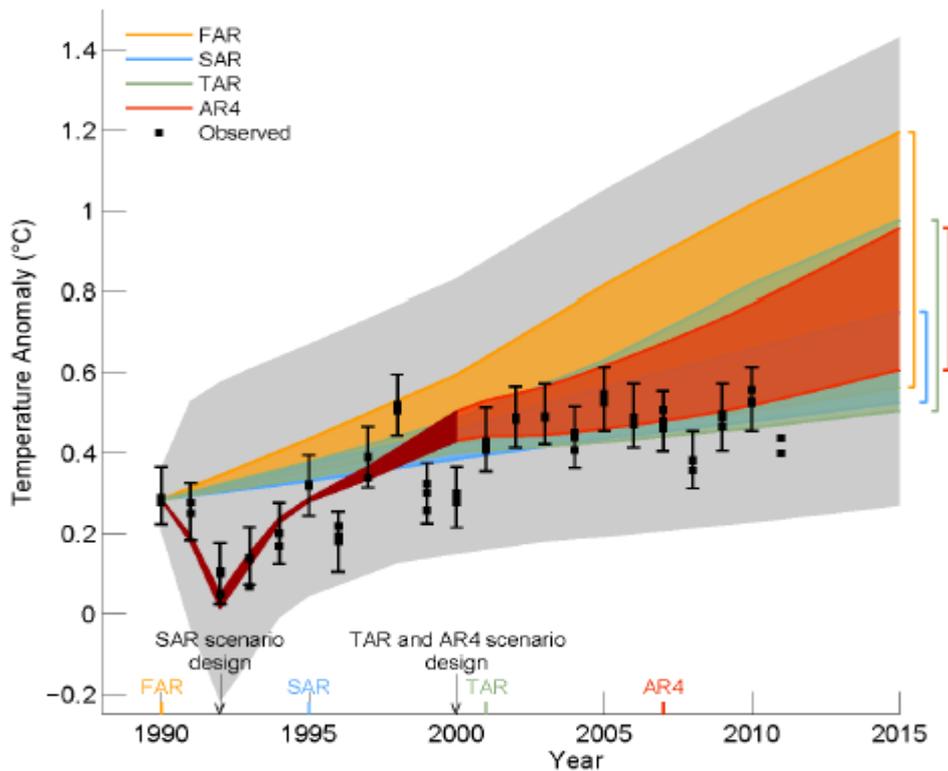
Yet if this feed forward mechanism were not to occur, and there are no records from extensive data from the past that it does occur, then even the UN's Intergovernmental Panel on Climate Change (IPCC), a deeply politicised body, has to admit that a doubling of the global atmospheric carbon dioxide level would only lead to about a 1.2°C rise in temperature. Note: We are only about a third of a way to that doubling of the pre-industrial age concentration. Given that humans live in a temperature range of -50°C to +50°C, sometimes within the same year, one can only conclude; so what, after all the impacts would actually be more positive than negative!

Yet not only are these uncertainties glossed over in the official documentation, but the only certainty with the IPCC's climate models is that they are extremely uncertain. Indeed they completely ignore the solar variations, which are strongly related with the natural climate change cycles, which always occurred prior to the industrial age. From a scientific perspective, given our current level of data and scientific understanding, it is pure and utter arrogance for any organisation to claim that they can model, not to mention predict, the complexity which is occurring within the earth's ecosystem. Not unsurprisingly, the evidence is increasingly mounting that these mathematical models are not an accurate reflection of the complex dynamics, which are occurring, and that their predictions do not reflect what is actually happening. It is not unsurprising that China<sup>25</sup>, where technology is valued, is calling for a complete review of climate change science by 2015, as a precondition for entering any possible negotiated agreement post 2020.

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<sup>24</sup> [http://ec.europa.eu/clima/policies/roadmap/index\\_en.htm](http://ec.europa.eu/clima/policies/roadmap/index_en.htm)

<sup>25</sup> <http://www.springerlink.com/content/w342k240350n4564/fulltext.pdf> and [http://scienceandpublicpolicy.org/images/stories/papers/reprint/human\\_induced.pdf](http://scienceandpublicpolicy.org/images/stories/papers/reprint/human_induced.pdf)



**Figure 3: Extract from recently released draft AR5 IPCC Climate Change Report. The four bright colours represent the predicted temperatures of the IPCC models, which are in stark contrast to the observed temperatures.**

One can only therefore conclude that the \$5.5 per tonne of CO<sub>2</sub>, derived by Prof Tol based on the state of knowledge in 2008, is if anything on the high side.

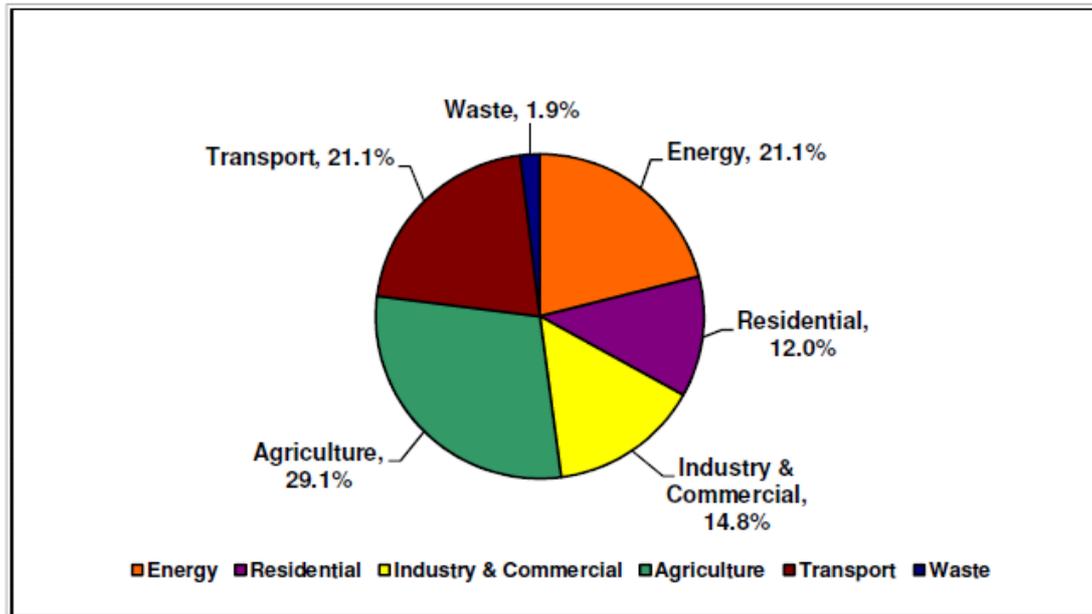
#### **4. THE COST – BENEFIT ANALYSIS OF THE IRISH RENEWABLE ENERGY PROGRAMME**

Given the outcome of the previous two sections, we can conclude that in 2011 the wind energy installed in Ireland saved about 1.1 million tonnes of CO<sub>2</sub> with limited potential for further increases in CO<sub>2</sub> savings, due to the inefficiencies now induced on the grid. From a financial perspective, given the external cost for CO<sub>2</sub> previously derived, one can only conclude that the annual environmental benefit is in the order of €5 million. This is not a lot in real terms; one may well argue extensively on the manner in which it is derived, but in reality it is simply not sound to derive a financial figure, which is much different than the above. Regardless, it is a shocking figure when compare to the financial cost of the programme, not to mention its impact on the Irish environment.

If we consider the Principle of Proportionality and the Directive on Strategic Environmental Assessment, then implicit in these is the consideration of alternatives. In other words, if the objective of the Irish renewable energy programme is to save a million tonnes plus of CO<sub>2</sub> per annum, how would one best go about it? After all, in 2004 as Eirgrid pointed out in their report on the economics of wind generation:

- “The cost of CO<sub>2</sub> abatement arising from using large levels of wind energy penetration appears high relative to other alternatives”.

Unfortunately, as was pointed out before, this report was ignored. So what are those alternatives?



**Figure 3: Ireland's Greenhouse Gas Emissions for 2009 by sector<sup>26</sup>**

From the above figure, one can see that emissions from the Irish waste sector, primarily methane released from landfills, amounted to 1.2 million tonnes of CO<sub>2</sub> equivalent in 2009. Methane being some twenty times more potent as a greenhouse gas than CO<sub>2</sub>. These waste emissions have to be looked at seriously; they are the 'low hanging fruit'. If instead of having waste rot in the ground to produce methane emissions to the atmosphere, it is combusted in a waste to energy plant, then heat and electricity are produced. As about 50% of the waste is biogenic in origin, 50% of this heat and electricity is classified as renewable energy.

Up until early 2012 when a 200,000 tonne per annum Waste to Energy plant went in to operation North of Dublin, Ireland had a 100% reliance on landfill for waste disposal. If however landfill was phased out in preference for Waste to Energy, there exists a potential in Ireland to generate some 102 MW of high grade renewable electricity, equal to 0.47 million t/a of greenhouse gas savings with additional potential for savings through use of heat. This is based on the 2.85 million tonnes of municipal waste generated each year<sup>27</sup>, 9 MJ/kg of waste, 25% electrical efficiency and a current grid intensity of 0.53 tCO<sub>2</sub>/MWh.

No doubt one can play around with these figures, for instance additional useful heat might be recovered for district heating or not all the municipal waste above might go to Waste to Energy plants. However, there are additional waste streams from industrial sources and waste water treatment plants, which could go in that direction.

<sup>26</sup> [http://www.epa.ie/downloads/pubs/air/airemissions/GHG\\_1990-2009\\_Provisional\\_2011.pdf](http://www.epa.ie/downloads/pubs/air/airemissions/GHG_1990-2009_Provisional_2011.pdf)

<sup>27</sup> [http://www.epa.ie/downloads/pubs/waste/stats/EPA\\_NWR\\_2010\\_web.pdf](http://www.epa.ie/downloads/pubs/waste/stats/EPA_NWR_2010_web.pdf)

Indeed the 2010 waste report demonstrate that landfilling of both commercial and municipal waste exceeds 2.1 million tonnes, while additional waste fractions end up as Refuse Derived Fuel (RDF). The point is that when one looks at both the potential to prevent the downstream methane emissions from landfills and the renewable energy which can be obtained, then clearly the annual emission savings are in excess of the 1.1 million tonnes derived from the wind energy programme.

What would this cost? It takes about €100 million to build a 200,000 t/a waste to energy plant, so we would be looking at most at a total budget of €1.5 billion, which would actually be less as the landfills would no longer have to be built. Furthermore, such a plant would have a lifespan of 35 plus years and be integrated into the existing grid and provide a steady reliable input of electricity, which required no back-up. This is sensible, as every engineer knows wind is an erratic, highly dispersed energy source, which requires as a result massive numbers of giant wind turbines and associated grid connections scattered across the landscape to harness it. Furthermore, it is highly intermittent, such that not only is full back-up required, but the existing power stations on the grid are forced to operate inefficiently. In addition, due to the stresses on these structures, their lifespan is limited; turbine gearbox and bearing failures are frequent. As the report from the Renewable Energy Foundation at the end of 2012<sup>28</sup> pointed out; “the economic life of onshore wind turbines is between 10 and 15 years, not the 20 to 25 years projected by the wind industry itself, and used for government projections”.

One can look at the figures in many different ways, low penetration of wind energy versus high penetration, different types of Waste to Energy project, etc. Waste to Energy has a published cost of about €40 per tonne of CO<sub>2</sub> reduced<sup>29</sup>, while the 2004 Eirgrid report referred to earlier was pointing out that 1,500 MW of wind energy on the Irish grid was equivalent to a CO<sub>2</sub> abatement cost in excess of €120 per tonne. Note: This figure is now much higher given inflation and the fact that the installed wind energy capacity (penetration) is larger, with resulting greater inefficiencies on the grid.

No doubt others will produce alternative cost-benefit analyses for consideration, as is fitting. For instance Ireland has a major problem with agricultural run-offs into its inland waters. There is a lack of biodigestion facilities, which could not only have produced biogas, but reduced this pollution of the surface waters. Indeed, with regard to renewable energy itself, there are after all eleven different sources recognised in Directive 2009/28/EC on renewable energy, wind is only one of them. After all the definition of environmental information in the Aarhus Convention is clear; it is scientific and includes factors such as energy, and cost-benefit and other economic analyses and assumptions used in environmental decision-making. Clearly for a programme of this order of magnitude, such analysis of cost-benefits and the alternative solutions forms part of the ‘necessary information’ and part of the public participation in decision-making.

## **5. THE STRATEGIC ENVIRONMENTAL ASSESSMENT PROCESS**

Clearly if one had properly defined the environmental objectives of this Irish renewable energy programme and considered the alternatives in which to reach

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<sup>28</sup> <http://www.ref.org.uk/press-releases/281-wearnandntearnhitsnwindnfarmnoutputnandneconomicnlifetime>

<sup>29</sup> [http://www.ecofys.com/files/files/serpec\\_wastesector\\_report.pdf](http://www.ecofys.com/files/files/serpec_wastesector_report.pdf)

them, then we would not be in the circumstances we are in now, i.e. huge financial costs, huge environmental impact and nothing to really show for it. The Directive on Strategic Environmental Assessment, 2001/42/EC, was adopted into Irish law by 2004, and therefore pre-dated the renewable energy programme. By law such a process, including the detailed Environmental Report and associated public participation, should have been completed before the plan or programme could be adopted by the administration.

In September 2009 the author sent in a legal request for information in relation to Strategic Environmental Assessment and other parameters in relation to the renewable energy programme. There was a refusal to provide it, even though it should have been there by law. The matter was appealed to the Commissioner for Environmental Information<sup>30</sup> (the Ombudsman) and this and related documentation set off a chain of events, which ended up with the UNECE Compliance Committee and the current case in the Irish High Court. It is useful to point out the findings of this appeal, not only in relation to the complete absence of the Strategic Environmental Assessment, but the response to Ms Dolan, the investigating officer of the Commissioner for Environmental Information.

- “Ms Dolan asked the Department whether it held any additional information on (a) a ranking system for technology alternatives in terms of their ability to meet the criteria in the Directive and (b) options to reach the objectives in legislation. The Department responded that no such information is held”.

So nothing was assessed, it was just implemented.

This is in fact the crux of the issue, officials in the EU and the Member States see that they have a legal right to implement targets related to renewable energy, the targets themselves being the sole justification and wind energy being the quickest way to reach these targets. However, that is not what the law says.

The Preamble of the UNECE Aarhus Convention is for instance very clear:

- “Recognizing the importance of fully integrating environmental considerations in governmental decision-making and the consequent need for public authorities to be in possession of accurate, comprehensive and up-to-date environmental information”.

There is also the matter of public participation in decision-making. The environment does not belong to the State administration, but to the people. As a result they have to be properly informed and provided with an opportunity to participate in the decision-making. The key aspect of this is: “Taking account of the public participation in the decision”. Members of the public do not have a veto right, but the authorities must, to an objectively high standard, show that public comments have been seriously considered, i.e. they should be able to show why a particular comment was rejected on substantive grounds. Indeed in appropriate circumstances a member of the public, whose comments were not duly taken into account, should be able to challenge the final decision in an administrative or judicial proceeding<sup>31</sup>.

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<sup>30</sup> <http://www.ocei.gov.ie/en/DecisionsOfTheCommissioner/Name,12832,en.htm>

<sup>31</sup> Page 109: <http://www.unece.org/fileadmin/DAM/env/pp/acig.pdf>

However, all of this was by-passed. The Irish legislation which implements the Directive on Strategic Environmental Assessment states<sup>32</sup>; “the Environmental Report shall identify, describe and evaluate the likely significant effects on the environment of implementing the plan or programme and reasonable alternatives taking account of the objectives and the geographical scope of the plan or programme”. The public were in this manner denied their opportunity to see the administration’s analysis of the programme in the Environmental Report, prepare their own analysis of the programme for review as part of the public participation and if necessary to challenge the final decision in a Court of law if the process was unsatisfactory.

With regards to grounds to challenge, and in this context it must be remembered that if the current High Court action is successful, the programme will have to be subjected to Strategic Environmental Assessment, then the Principle of Proportionality is a key issue. Clearly when there is quantification of the costs and benefits, the current programme is widely disproportionate. In this context too it has to be remembered that the Aarhus Convention is clear in that public participation has to take place when all options are open and effective public participation can take place.

So how did we end up with binding targets set by the EU in its 20% renewable energy by 2020 programme (Directive 2009/28/EC) when for Ireland, or indeed for any other Member State, it was never worked out what was to be built, where it was to be built, what were the impacts, what were the benefits (if any), how much would it cost and what were the analyses of the subject matter of the citizens who were going to pay for it all? In reality ‘political consensus’ was achieved on a 20% target for the EU as a whole, which was then shared out to the Member States, based on each Member State’s existing renewable energy percentage and a factor based on GDP<sup>33</sup>. So the whole thing had nothing to do with objectives of environmental protection, but simply politically agreed targets.

Of course, quite a few legally binding considerations and procedural steps were by-passed along the way, in this mad rush to save the planet from completely overheating or whatever. A more detailed analysis of this can be found at the complaint to the EU Ombudsman, which has been taken by the European Platform Against Windfarms (EPAW)<sup>34</sup>. In essence, the bottom line is very simple, some measures related to renewable energy, such as Waste to Energy, may well be suitable or appropriate, but the large scale roll out of many others, such as wind energy, is completely unsuitable and disproportionate in relation to achieving quantifiable environmental objectives. So why are we doing it and being forced to pay for it? The answer to that is because a small clique of administrators are operating completely outside of the law and remorselessly driving this programme.

## **6. THE EU’S POSITION REGARDING THE LEGAL FAILINGS OF THE RENEWABLE ENERGY PROGRAMME**

For over three years, time and time again, the EU was made aware of the legal failures with the renewable energy programme, in particular with its implementation in

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<sup>32</sup> S.I. No. 435 of 2004: <http://www.irishstatutebook.ie/2004/en/si/0435.html>

<sup>33</sup> See Recital (15) of Directive 2009/28/EC: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=Oj:L:2009:140:0016:0062:en:PDF>

<sup>34</sup> <http://www.epaw.org/documents.php?lang=en&article=c4>

Ireland. A long list of officials, from the EU Energy Commissioner down, has failed to address these legal failings. Clearly they are complicit in these breaches of law, which are associated with an enormous financial burden being placed on citizens. The next section documents in a step by step fashion as it evolved, the evidence which clearly demonstrates that why this renewable programme was never properly subjected to environmental assessment and public participation, was because these officials took pre-mediated steps to ensure that this did not occur. In other words the law and its related steps of democratic accountability were deliberately subverted.

Simply put, these officials have demonstrated behaviour, which is not only arrogant to the views of others, but also to the law, which governs their activities. The EU Commission is increasingly behaving in a manner, which is a major threat to the welfare of European citizens and much of this is related to the fact that the Commission is essentially unaccountable.

This unaccountability relates primarily to two grounds. Firstly, while the Commission has the role as 'Guardian of the Treaties', it has absolute discretion on what it enforces. So officials of the Commission can and do facilitate breaches of law by the Member States to pursue certain objectives, a point which will be returned to in relation to the renewable energy programme and the Strategic Environmental Assessment.

Secondly, while the Aarhus Convention grants the Citizen the right to challenge acts or omissions of private persons or public authorities, which contravene provisions of its national law relating to the environment, one cannot as of yet gain access to the European Court to challenge the EU on such issues, without a lengthy and prolonged case in the Member State Courts. As a result, the EU Commission can rush through Directives in an unaccountable and undemocratic manner, as it does, without the necessary 'check and balance' being available for the citizen or NGO to challenge them. The Commission was found in breach of these Rights in June 2012 by the European Court, but is currently appealing this decision, much to the disgust of those of us who believe in democratic accountability<sup>35</sup>. Indeed, the democratic deficit is currently widely spoken about in Europe and the unnecessary costs, both financial and environmental, associated with the renewable energy programme are a striking example of what is occurring as a result.

The first pillar of the Aarhus Convention relates to access to information on the environment. Access to environmental information ensures that members of the public can understand what is happening in the environment around them. It also ensures that the public is able to participate in an informed manner. Not only do public authorities have to grant access to information on the environment on request, but they have to possess and update environmental information, which is relevant to their function, and ensure that it is transparent and effectively accessible. In this regards the definition of transparency is important:

- "Transparency means that the public can clearly follow the path of environmental information, understanding its origin, the criteria that govern its collection, holding and dissemination, and how it can be obtained"<sup>36</sup>.

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<sup>35</sup> <http://www.eeb.org/index.cfm/news-events/news/ngos-condemn-anti-democratic-move-by-european-commission/>

<sup>36</sup> Page 71 Aarhus Convention: An Implementation Guide:  
<http://www.unece.org/fileadmin/DAM/env/pp/acig.pdf>

In the EU Directive, which implements this pillar of the Convention, namely Directive 2003/4/EC, information on the environment has to be 'accurate, up to date and comparable'.

The author spent several months in 2009 being refused access to information on the environment from a multiple of Irish authorities, who should have been in possession of such information, a number of which ended up as appeals to the Commissioner for Environmental Information<sup>37</sup>. The EU Commission were contacted in this regard and finally this led in March 2010 to a Compliant Case CHAP (2010) 0645 being opened. However, this didn't lead to anything actually being done about it. It was therefore requested at the end of August 2010 that a meeting be facilitated, given the seriousness of the legal non-compliances occurring in Ireland and the huge costs, which were being incurred as a result of this renewable energy programme.

This meeting was eventually held at the EU Commission's office in Brussels on the 3<sup>rd</sup> December 2010. Those that attended were: Antoinette Long, Liam Cashman, Gerda Postelmans, and Stephanos Ampatzis from Directorate General (DG) Environment and from DG Energy, Tom Howes. Pat Swords was accompanied by Luc Rivet from the European Platform against Windfarms (EPAW). The minutes of the meeting, which were prepared by Liam Cashman, the deputy head of legal enforcement in DG Environment, were obtained at a later stage. These demonstrated that what was presented to these officials of the EU Commission by Pat Swords included:

- Ireland's National Renewable Energy Action plan (NREAP) under Directive 2009/28/EC did not undergo SEA (*Strategic Environmental Assessment*) pursuant to Directive 2001/42/EC; the information included in this plan does not explain how and to what extent the CO<sub>2</sub> emissions would be reduced.
- "NREAP's (*National Renewable Energy Action Plan*) focus on wind energy does not reflect principle of proportionality since it will involve major increases in energy costs and contribute to fuel poverty and lack of competitiveness; wind energy is an inefficient power source because of its intermittent nature and there is a lack of data to support claims that it will reduce carbon dependence. Irish politicians have endorsed a major expansion of wind energy without any proper scrutiny of costs and benefits; absence of SEA (*Strategic Environmental Assessment*) demonstrates this".

However, there was an absolute refusal to deal with these issues. As far as representatives from the Commission were concerned, it was the renewable targets which counted; the arguments in relation to objectives having to be linked to environmental protection and the proper application of the principle of proportionality were irrelevant. Furthermore, there were two additional insights from the meeting, which can only be described as disturbing.

Firstly in the context of the REFIT I scheme, which was the State Aid for Environmental Protection approved in 2007 to fund 1,384 MW of wind energy in Ireland, it was asked how did DG Environment and DG Energy ensure that the environmental protection objectives were appropriate and the programme was in compliance with the legally binding environmental assessments and public participation. There was a long drawn out silence in this regard before it was finally acknowledged that it was not them, but DG Competition, which had approved it.

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<sup>37</sup> <http://www.ocei.gov.ie/en/DecisionsoftheCommissioner/>

The second insight was at the end of the meeting in relation to a condescending remark of Liam Cashman that the Commission had initiated legal proceedings in relation to a 71 turbine wind farm in Derrybrien<sup>38</sup>, where construction works had caused a massive peat landslide, the European Court having subsequently determined that Ireland had failed to ensure a proper Environmental Impact Assessment for the project. The inference being we should be happy with that. As was pointed out to Mr Cashman in reply, if the energy policy had complied with the law, the turbines would not have been up there in the first place. Mr Cashman then made it clear that they wouldn't be taking enforcement action in relation to matters of Energy Policy. So this really begged the question, on what basis is legal enforcement initiated, either there is a breach of law or there isn't?

Following the meeting an access to information on the environment request was submitted to the EU in relation to the Approval of REFIT I, i.e. as to how the environmental protection objectives were assessed and compliance assured with the necessary steps of environmental assessment and public participation. Instead of the fifteen working days specified in the legislation, the reply took four months. It turned out that the only documentation available in this regard, other than that submitted by the author, was the Note to File 0645, i.e. the minutes of the meeting on the 3<sup>rd</sup> December.

Similarly, following the approval of REFIT II in early 2012 in order to fund an additional 4,000 MW of renewable energy, another access to information request was sent in under Regulation 1367/2006 in relation to the same issues, i.e. how the environmental protection objectives were assessed and quantified and compliance with the Aarhus Convention assured<sup>39</sup>. Sadly all that was received was a page and a quarter originating from the Department of Communications, Energy and Natural Resources in which it was stated that in 2009 (prov) we had 14.4% of our electricity from renewable sources and that the proposed scheme will contribute towards delivery of approximately 40% of electricity by renewable sources by 2020. Zero data on environmental protection was available or even assessed.

In May 2011, the head of legal enforcement in DG Environment, Jean Francois Brakeland closed the CHAP (2010) 0645 case; their position in this letter being that they were not in a position to establish there was an infringement. Despite this there were two on-going cases still proceeding, the first being a complaint 2587/2009/JF at the EU Ombudsman in relation to the EU Commission and the conduct of the Irish renewable energy programme, it being a clear breach of the Principle of Proportionality and the Aarhus Convention, the second being the Communication ACCC/C/2010/54 at the UNECE Aarhus Convention Compliance Committee.

UNECE had set in January 2011 written questions to be responded to by July, in the EU's case four questions, while the Communicant (Pat Swords) had six more detailed questions. There were a number of noteworthy issues with the Commission's reply. Firstly, despite it being signed by senior lawyers in the Commission, namely Peter Oliver and Katarzyna Hermann, the nature and tone of

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<sup>38</sup> <http://www.rte.ie/news/2008/0703/derrybrien.html>

<sup>39</sup> See documentation of the 13.03.2012:

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

the response were highly unprofessional<sup>40</sup>. Clearly *ad hominem* applied; instead of addressing the questions presented by UNECE, more effort went into attacking the author, to the point of being libellous. However, with regard to the subject matter, all that could be offered is that; “it is generally recognised that renewable energy, and wind energy in particular, is preferential from an environmental point of view to non-renewable energy”. No reports or technical studies were referred to in order to substantiate this claim; in reality none existed.

Secondly in relation to the Strategic Environmental Assessment of the Irish renewable energy programme, they effectively lied that Ireland was in compliance, a position reiterated by the Commission’s senior lawyer Eric White in his opening statement to Compliance Committee meeting held on 21<sup>st</sup> September 2011 in Geneva on Communication ACCC/C/2010/54. Indeed Point 12 of this opening statement is quite remarkable<sup>41</sup>: “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”.

The last sentence being highly important in relation to considerations of proportionality within the context of State Aid for Environmental Protection, to be discussed latter. One could also add that it is pretty insulting to the members of the Irish public, who have to pay huge sums of money for this infrastructure, to state that they are not entitled to see information on the comparative costs of the options available in relation to this programme.

However, at the Compliance Committee meeting the issue boiled down to the obligation of the EU under Article 3(1) of the Convention to enforce its terms. Ireland had not ratified the Convention, the only one of 27 Member States not to do so, but it applied to Community legal order in Ireland and the EU Commission had an obligation to enforce its terms. Despite this the EU Commission was insisting that it had absolute discretion on what it enforced.

Mr White’s assertions related to the fact that their duties under the Aarhus Convention related only to an obligation with regard to a result, but not with regard to putting in place a certain amount of resources. However, despite being asked a number of clarification questions by the UNECE Compliance Committee, the EU Commission’s position was the same, they chose, seemingly based only on their own opinions, if an enforcement action was to be taken and asserted that it was us the Citizens, who should be processing their complaints through the National Courts. The Committee were clearly unhappy with what was being presented by the legal team from the EU Commission. Indeed during this process it was also pointed out that for two years the author had sent the EU Commission documentation in relation to

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<sup>40</sup> <http://www.unece.org/fileadmin/DAM/env/pp/compliance/C2010-54/Correspondence%20with%20Party%20concerned/Response%2028%20June%202011/frComRESPONSE.pdf>

<sup>41</sup> As posted 26.09.2011:  
<http://www.unece.org/env/pp/compliance/Compliancecommittee/54TableEU.html>

breaches of law. Mr White's position was that; 'Mr Swords didn't agree with our policies', so it was ignored.

Despite the EU Commission having closed the CHAP (2010) 0645 case in May 2011, the EU Ombudsman in his decision of September 2011<sup>42</sup> on Complaint (2587/2009/JF) did also forward information with regard to the Complaint Procedure CHAP (2010) 00645 back to the EU Commission for appropriate consideration and follow up with regard to their role as 'Guardian of the Treaties'. Note: This included the decision in Appeal CEI/09/006 from the Commissioner of Environmental Information in relation to the Department of Communications, Energy and Natural Resources and the failure to complete a Strategic Environmental Impact Assessment for the Irish Renewable Energy Programme<sup>43</sup>.

However, it was ignored to the point that ten days after the publishing of the Compliance Committee's draft finding on the 4<sup>th</sup> May 2012, in which the EU Commission were found in breach of the Convention in relation to the renewable energy programme, a formal letter was received from Jean Francois Brakeland at DG Environment dated the 14<sup>th</sup> May 2012 in which he again wrote that they saw; "no grounds for pursuing this complaint file, as we are not in a position to establish whether there is an infringement. Therefore, the file is now closed". Indeed, one can only comment that it was bizarre that such a letter was sent, as a year previously they had already sent an almost identical letter.

Indeed, that the Irish administration's refusal to complete the necessary environmental assessment and public participation of the programme was intricately linked to the refusal of the EU officials to enforce the legally binding legislation was becoming undisputable. Following the Compliance Committee meeting in Geneva an access to information on the environment request revealed<sup>44</sup> that on the 10<sup>th</sup> February 2010, the Irish Department of Communications, Energy and Natural Resources had sent an e-mail to the EU Commission querying as to whether there was an obligation to do a Strategic Environmental Assessment with regard to the National Renewable Energy Action Plan (NREAP), as this had not been mentioned or discussed at any of the on-going EU and Member State meetings. No doubt they were somewhat concerned over this issue, as they were at that time being investigated by the Commission for Environmental Information in relation to the failure to produce that documentation, as legally requested by the author.

It was not until the 7<sup>th</sup> July 2010 that a formal clarification was sent jointly by the Unit Heads of DG Energy and DG Environment and reached the Department of Communications, Energy and Natural Resources clarifying that a Strategic Environmental Assessment on the NREAP was not necessarily obliged at this stage of the process. Their position being that if a Member State has decided not to include in its NREAP specific mandatory measures to comply with, then a Strategic Environmental Assessment was not required at this stage. It is important to note this date, as under Directive 2009/28/EC, Member States had to notify, i.e. submit, their National Renewable Energy Action Plans to the Commission by 30<sup>th</sup> June 2010.

This response from the Commission was also a complete contradiction as Article 4 of the Renewable Energy Directive 2009/28/EC is very clear:

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<sup>42</sup> <http://www.ombudsman.europa.eu/cases/decision.faces/en/10882/html.bookmark>

<sup>43</sup> <http://www.ocei.gov.ie/en/DecisionsoftheCommissioner/Name,12832,en.htm>

<sup>44</sup> See documentation submitted on 10.01.2011:  
<http://www.unece.org/env/pp/compliance/Compliancecommittee/54TableEU.html>

- "The National Renewable Energy Action Plans shall set out Member States' national targets for the share of energy from renewable sources.....adequate measures to be taken to achieve those national overall targets, including cooperation between local, regional and national authorities, planned statistical transfers or joint projects, national policies to develop existing biomass resources and mobilise new biomass resources for different uses".

While Article 3 of the Directive is entitled:

- "Mandatory national overall targets and measures for the use of energy from renewable sources".

Furthermore, if those targets were not to be adequately met, then the Commission's position was to refer back those plans with a recommendation. One can also examine the National Renewable Energy Action Plan (NREAP) template produced by the EU Commission, namely C(2009) 5174-1<sup>45</sup>. The introduction is clear:

- "The purpose of the template is to ensure that NREAPs are complete, cover all the requirements laid down in the Directive".

It goes without saying that the most important element of the Directive is the 'mandatory national overall targets'. So how therefore could the Commission turn around a few months later and make a claim in relation to; "specific mandatory measures not being included in the NREAP"? All of this clearly demonstrates that the Commission was both informed and clearly complicit in the decision not to complete any environmental assessment for this programme of enormous scale. This did not just occur in the Irish situation, right throughout the 27 Member States this renewable target was rushed in, the Directive came out in April 2009, preparation of the National Renewable Energy Action Plans had to start almost immediately and then these had to be fully developed and adopted by the end of June 2010. There simply wasn't enough time allowed for the proper environmental assessments and public participation to be completed. In other words, the law was subverted.

This determination to continue to subvert the process to ensure that the programme is not subjected to environmental assessment continues. Following the European Platform Against Windfarm's (EPAW) complaint (1892/2012/VL) to the EU Ombudsman<sup>46</sup> in September 2012, the EU Ombudsman sought clarifications from the Commission on the following allegation:

- "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".

In the reply of 4<sup>th</sup> December 2012 from Marie Donnelly, Director for new and renewable sources of energy, energy efficiency and innovation at the EU Commission, it was tried to assert that a country could slice up the requirement for a Strategic Environmental Assessment of its National Renewable Energy Action Plan into various Strategic Environmental Assessments to be done at a later date downstream and on a smaller scale. Not only is this a breach of the law and the rights it bestows on the citizens, but it defeats the purpose, which is to assess the

<sup>45</sup> [http://ec.europa.eu/energy/renewables/doc/nreap\\_adoptedversion\\_30\\_june\\_en.pdf](http://ec.europa.eu/energy/renewables/doc/nreap_adoptedversion_30_june_en.pdf)

<sup>46</sup> <http://www.epaw.org/documents.php?lang=en&article=c4>

impacts of all projects cumulatively at the national level. It also by-passes the assessment of objectives at the national level in relation to the Principle of Proportionality, i.e. the balancing out of positive effects against negative ones, the comparison with alternative investments, etc.

Clearly the Strategic Environmental Assessment is a crucial step, not only with regard to proceeding with due care and attention, but also with regard to democratic accountability. It places a barrier between ideology and proper governance; a lesson learnt with bitter experience in Eastern Europe. One may well ask do these same EU officials, who do not care about such niceties, really know what this programme is actually trying to achieve. In this regard the author also played a role in a second Communication to the UNECE Compliance Committee, ACCC/C/2012/68<sup>47</sup>, in which the EU and UK are currently being investigated in relation to the compliance of the Scottish renewable energy programme. The report of one of the observers from Scotland, who attended the Compliance Committee meeting on the 12<sup>th</sup> December 2012 in Geneva, is particularly revealing in this regard.

- “Jean-François Brakeland, the Head of Legal Enforcement at the Directorate General (DG) Environment of the EU Commission, when being questioned on giving information to the public about carbon emissions made a series of dismissive comments including, memorably, “If we were to take instead of a 110 m high wind turbine a 110 m high metal statue of Mickey Mouse, you would not be expected to do a detailed carbon assessment on that, so why do you expect a detailed carbon assessment for the wind turbine?” Words failed us”.

## **7. STATE AID AND PROPORTIONALITY**

The wind energy programme in Ireland is essentially ‘subsidy farming’. If these subsidies were not available, this hopelessly uneconomic infrastructure would never have been built. Unwinding the many forms of direct and indirect subsidies associated with this programme would be a bit like unwinding the Common Agriculture Programme (CAP). However, there are key aspects, first of all the priority access to the grid, which means that when intermittent renewable energy is available, it has to be given priority over non-renewable sources of supply. Secondly, there is a preferential above market rate provided to producers of renewable energy under the Renewable Energy Feed In Tariff (REFIT) scheme. Finally, there are infrastructure developments to facilitate wind farms, such as the massive grid expansion and interconnector(s) to the UK, which is then passed on as a direct cost to the electricity consumer.

With regard to the EU Commission, State Aid for Environmental Protection, such as the priority access and REFIT type schemes, has to be approved by the Commission. In addition, the European Investment Bank, the Commission’s bank, provides direct financing at favourable rates to support renewable energy projects, which for Ireland have included:

- In 2009 the European Investment Bank provided €200 million to the State owned Electricity Supply Board (ESB) for wind farms, while €300 million was loaned to state owned Eirgrid for an electrical interconnector to the UK, to which an additional €100 million was granted aided by the EU. The total

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<sup>47</sup> <http://www.unece.org/env/pp/compliance/compliancecommittee/68tableeuuk.html>

capital cost of this interconnector project being €600 million. There being no economic justification for it other than to facilitate an increase in wind energy.

- In 2011 €235 million was loaned to the ESB “to fund 'smart' investment in Ireland’s electricity networks to improve transmission and distribution links from wind farms and to integrate more renewables to the networks”.

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- In late November 2012, despite the ruling of the UNECE Aarhus Convention and leave for a Judicial Review being granted in the Irish High Court, €155 million was loaned to another State owned company, Bord Gais, for investment in wind farms.

Therefore, the Irish electricity consumer has now to pay back nearly €1 billion in loans provided to semi-state companies for renewable investments, which were totally unnecessary and unjustified and would never have occurred if such support structures were not put in place. This is a point continuously stressed by the Irish Academy of Engineering<sup>48</sup>, we have more than enough modern generating capacity; in particular as with the economic downturn consumption is decreasing not increasing. So why are we adding more capacity, particularly when that capacity is unreliable, costly and substandard? Furthermore, if one examines it logically, instead of the State owned electricity providers above competing on the free market to provide a cost effective reliable system, they clearly are in a position (at our expense) to generate higher and easier revenues in this protected market place of guaranteed electricity tariffs and favourable credit terms.

Does this remind anybody of something? Certainly the author is conscious of such issues, as he spent a considerable part of the last decade and more in Eastern Europe helping to implement the EU’s environmental legislation, particularly with regard to industrial pollution control and legislation on major accident hazards. In other words, trying to rectify the legacy of planned economies, ideological driven without any regard to environmental or economic impacts and benefits. Seen it all before, although it is quite amazing that one has only to go to Article 3 of the Lisbon Treaty (TEU):

- “The Union shall establish an internal market. It shall work for the sustainable development of Europe based on balanced economic growth and price stability, **a highly competitive social market economy**, aiming at full employment and social progress, and a high level of protection and improvement of the quality of the environment. It shall promote scientific and technological advance”.

So why can’t a European citizen purchase his electricity from whom he or she so chooses rather than being forced to purchase a percentage from completely inefficient producers? After all, that is the Right bestowed by Article 3 above.

In reality, while State Aid can be used to distort the market economy, such as for environmental protection, this must be on the basis that the aid is proportionate and that the allocation of aid occurs on the basis of objective and transparent criteria. Indeed the EU Commission has its own guidance on State Aid for Environmental

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<sup>48</sup>[http://www.iae.ie/site\\_media/pressroom/documents/2011/Apr/06/IAE\\_Energy\\_Report\\_Web2\\_05.04.2011.pdf](http://www.iae.ie/site_media/pressroom/documents/2011/Apr/06/IAE_Energy_Report_Web2_05.04.2011.pdf)

Protection<sup>49</sup>. In particular, in Section 1.3 of the 2008 Guidelines on State Aid for Environmental Protection it is documented how the Commission is required to apply a balancing test to assess:

- “The positive impact of the aid measure in reaching an objective of common interest against its potentially negative side effects, such as distortion of trade and competition”.

The Proportionality of Aid is further addressed in Section 1.3.5:

- “Aid is considered to be proportional only if the same result could not be achieved with less aid”.
- “In particular, the aid amount must be limited to the minimum needed to achieve the environmental protection sought”.

Yet as has been pointed out previously, we simply do not know what the environmental protection objectives of the implementation of Directive 2009/28/EC<sup>50</sup> are; neither do we know the costs or the alternatives considered. This is not just an Irish issue. In the National Renewable Energy Action Plan template produced by the EU Commission; the only Section which can be considered as related to environmental issues was Section 5.3:

### 5.3. Assessment of the impacts (Optional)

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

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

Nineteen of the Member States left this completely blank, failing to fill out the table above. The others essentially provided little or limited information, such as the UK where the Renewable Energy Strategy / National Renewable Energy Action Plan contained no environmental considerations. According to the EU Energy Commissioner in his reply to Struan Stevenson MEP<sup>51</sup> on this issue, Section 5.3 was

<sup>49</sup> 2008/C 82/01 and 2001/C 37/03: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2008:082:0001:0033:EN:PDF>

<sup>50</sup> For 20% renewable energy by 2020

<sup>51</sup> <http://www.epaw.org/documents/Attachment%204%20-%20Correspondence%20between%20Struan%20Stevenson%20MEP%20and%20Energy%20Commissioner.pdf>

an optional reporting requirement "to avoid an excessive administrative burden on the Member States".

Therefore it is evident from the failures of the Member States to document the essential environmental information in Section 5.3 above that it simply wasn't possible to complete such a balancing test. Simply put, if there is a failure to quantify the greenhouse gas savings and as has been demonstrated before, the external cost of such greenhouse gas savings, then how can the benefit be quantified? So what is the 'positive impact of the aid measure' to be assessed in the balancing test?

Furthermore, what are the negative side effects? Pretty difficult to also assess this if one hasn't done the cost estimate above. Furthermore, if no alternatives have been quantified for the programme, how on earth can the chosen solution be demonstrated to be proportionate? Certainly in this point alone, one also has to consider the position of the Commission's lawyer Eric White, who in his opening statement to the Compliance Committee meeting made it clear in that there was no entitlement to information on comparative costs.

If we consider the situation in Ireland, where State Aid has been granted under the REFIT I and REFIT II programmes, as documented previously, it is very, very clear that no information on environmental protection or the alternatives to achieve this level of protection, such as with lower costs, was ever assessed by the Commission in their approval process for this State Aid. In short, the Irish public have absolutely no information on what environmental protection they are funding through ever soaring electricity costs, a position which has also been documented by the Irish Department of Communications, Energy and Natural Resources through a number of Access to Information on the Environment Requests<sup>52</sup>:

- No ranking system was ever prepared in relation to the different renewable technologies and their ability to meet the objectives of the renewable Directive. In other words the relative abilities to achieve greenhouse gas savings and the resulting cost basis was never assessed;
- No verification of emission savings with the wind energy installed to date has been completed;
- No estimation of greenhouse gas savings has been completed with regard to Ireland's National Renewable Energy Action Plan, which is to implement the EU's 2009/28/EC Directive on achieving an EU 20% renewable energy target by 2020;
- The funding mechanisms for the renewable energy programme (REFIT) are to ensure delivery of an EU obligation in relation to renewable energy and not part of a commitment to contribute to any quantifiable environmental target related to quantified carbon dioxide savings.

Ireland's renewable energy programme is simply a massively expensive project to install some four thousand wind turbines and to double the grid by an additional 5,000 km of high voltage lines. It is **not** a programme to achieve carbon dioxide and fuel savings using the principle of proportionality and the fundamental premise of

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<sup>52</sup> <http://www.ocei.gov.ie/en/DecisionsoftheCommissioner/Name.12832.en.htm> and [http://www.unece.org/fileadmin/DAM/env/pp/compliance/C2010-54/Correspondence%20with%20communicant/frCommC54Annex\\_Reply\\_from\\_DCENR\\_5Sept2011.pdf](http://www.unece.org/fileadmin/DAM/env/pp/compliance/C2010-54/Correspondence%20with%20communicant/frCommC54Annex_Reply_from_DCENR_5Sept2011.pdf)

minimising the burden on citizens and industry. Yet if we look at Section 5.2.1.4 of the EU's guidelines for State Aid for Environmental Protection:

- “The Member State should provide evidence that the aid is necessary, that the amount is kept to the minimum and that the selection process is proportional.”

Sadly, these blatant failures can also be seen in the funding mechanisms in other Member States.

## **8. GOVERNANCE WITHOUT REASON**

Having established that a completely unacceptable situation has occurred, how does one go about changing it? Before one comes to that point one must understand and consider; “how do you reason with those, who have never used reason to reach the point they are now at”. This is an important point, those who run businesses, work as engineers, even act as lawyers, use as a fundamental tool and decision making criterion, the powers of logic and reason. However, in so many aspects of life; “why do they not think the same way we do”, is profoundly flawed. Instead one has to understand the situation as it is and the manner in which ‘it’ thinks and acts, it being our system of governance.

While the Irish system of governance is quite extreme, in that it has recently demonstrated how it could turn prosperity based on high technology manufacturing into state bankruptcy, it is by no means unique in the Western World with regard to its flaws. Jim Glennon, who served seven years in the Oireachtas (Irish Parliament) as a member of both the lower and upper houses before retiring in 2007, wrote in the Irish Times on the 1<sup>st</sup> April 2010:

- “Most voters are, somewhat naively, of the view that government policy is developed through a process of careful analysis, comprehensive consultation, and the selection and prioritisation of initiatives based on impact and thorough cost-benefit analysis.
- In reality, most government policy-making is based on an ad-hoc reaction to events / media-pressure, and driven by the responsible Minister’s particular requirement to be seen to announce something which seems at least semi-sensible.
- Regrettably, policy-making which is focused solely on addressing tactical issues inevitably leads to strategic mistakes. Many of the problems now being faced by the Government are the result of ad-hoc fixes of problems during the boom – got a problem, create an agency, buy-off the unions, get it off the front page”.

Ireland’s renewable energy programme is a classic tale in this regard, which takes a bit of unravelling. In 2006 the Government brought out a Green Paper (draft Policy) on Energy, which was adopted as the finalised Policy (White Paper) in 2007. In 2009 when requesting information from the Department in relation to the Strategic Environmental Assessment, additional information was being requested as to the origin of the information in the Green Paper in relation to nuclear energy<sup>53</sup>. Not only

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<sup>53</sup> <http://www.dcenr.gov.ie/Energy/Energy+Planning+Division/Energy+White+Paper.htm>

was this clearly false, but in their Submission to the consultation to the Green Paper, this was pointed out by the Irish Academy of Engineering, but promptly ignored in the final policy, which was also false in this regard. So who exactly was writing this stuff, when there was no respect for factual accuracy?

The resulting appeal to the Commission for environmental information was revealing.

- “The position of the Department is that documents such as the energy policy White Paper are statements of Government proposals and / or policy on particular policy issues. The energy policy White and Green Papers were considered, deliberated on and agreed by Government. The Department stated that various individuals worked on particular sections, but this does not affect the fact that they are Government statements, of proposals for energy policy”.

It is quite amazing really, some of the most highly paid civil servants are in Ireland, but when it comes to preparing such crucial documentation they leave it to the fifteen Members of the Cabinet and their ‘spin doctors’. Yet:

- “The White Paper is a statement of overall collective Government policy and the paper was agreed by the Cabinet as a whole. The then Secretary General of the Department of Communications, Marine and Natural Resources would have had ultimate sign off of any draft documents in this context”.

Interestingly enough when it came to explaining how the false documentation on nuclear came to be there, they couldn’t. All they could do was reference the source documentation, of which the only one addressing the situation of nuclear energy in Ireland, was a 2006 Report from the Irish Academy of Engineering, which basically stated the opposite of what was in the Green Paper.

When it came to renewables, the Green Paper picked a target of 30% of electricity to be generated by renewables by 2020 basically ‘out of the hat, just like a white rabbit’. Then in the White Paper this was increased to 33%, in the process pointing out:

- “We are setting very ambitious targets for expanding the role of renewable energy notably the target of 33% of electricity consumption to come from renewable resources by 2020. There are considerable challenges inherent in realising these ambitious targets. The growth of emerging technologies remains constrained by their relative cost. (Offshore wind which is capital intensive and technologically challenging is a case in point). High fossil fuel prices have contributed to making renewables more cost competitive but investment costs do remain a key challenge. The Government considers that the balance of social costs and benefits must be recognised as positive and that is our starting point”.

So the ‘buzz word’ was renewables, the facts about nuclear were falsified to rule it out and balance of costs and benefits must, based on no actual facts or figures provided, be recognised as positive. Not a lot of reason or logic behind this.

So now this position had to be justified and where better to turn than to the Universities. The situation of the UN IPCC reports with the prominent ‘Hockey Stick’ graph of previous climatic records, which was demonstrated to be based on unsuitable data and biased statistics, was not only a disgrace, but reflect badly on

practices of the UK University of East Anglia, which were actually illegal. Official inquiries resulted, that of Lord Oxburgh's independent panel concluded:

- "The change in temperature is not as great over the 20th century compared to the past as suggested by the Mann paper."
- "The Mann 1998 hockey stick paper used a particular technique that exaggerated the hockey stick effect."

The report of the House of Commons Science and Technology Committee stated; "climate science is a matter of great importance and the quality of the science should be irreproachable". With regard to Freedom of Information, the report stated:

- "The disclosed e-mails appear to show a culture of non-disclosure at the CRU (*Climate Research Unit of the University of East Anglia*) and instances where information may have been deleted, to avoid disclosure".
- "The Deputy Information Commissioner has given a clear indication that a breach of the Freedom of Information Act 2000 may have occurred but that a prosecution was time-barred; however no investigation has been carried out".

Increasingly sober careful scientific research, which is often characterised by inherent uncertainties, has had to bow out to the 'tabloid splash' or political agendas of the spin doctors. So too the 'All Island Grid Study'<sup>54</sup>, which when it was published in 2008 then led the Government to increase the target for renewable energy on the grid from 33% to 40%. The Irish Academy of Engineering has repeatedly commented on<sup>55</sup>; "the obvious inadequacies of the so called "All Island Grid Study". These inadequacies were identified in the report by the report authors themselves and the Academy is strongly of the view that the shortcomings identified by the authors render it unsuitable for use as a basis for national policy".

The key generation portfolios for this study, which lead to nearly all of our renewable energy investment being assigned to wind power, was completed by the Electricity Research Centre of University College Dublin. It was 'made to order' for the political objective of the time, a Green Party Minister for Energy and a Green Party Minister for the Environment, both of who were fanatically against Waste to Energy projects and as equally fanatically pro wind energy. This is not said lightly, the reality is that the Irish Administration at that time and the Minister for Environment in particular, acted outside of the law to force Waste to Energy companies out of business<sup>56</sup>. This sorry affair reached the point where the US Ambassador had to go public to the Irish media and state that the irregularities, which were occurring, were a real threat to US investment in Ireland, as a US Waste to Energy Company was at the centre of this political storm<sup>57</sup>.

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<sup>54</sup> <http://www.dcenr.gov.ie/Energy/North-South+Co-operation+in+the+Energy+Sector/All+Island+Electricity+Grid+Study.htm>

<sup>55</sup> [http://www.iae.ie/site\\_media/pressroom/documents/2011/Apr/06/IAE\\_Energy\\_Report\\_Web2\\_05.04.2011.pdf](http://www.iae.ie/site_media/pressroom/documents/2011/Apr/06/IAE_Energy_Report_Web2_05.04.2011.pdf)

<sup>56</sup> See waste related sections of:  
<http://www.unece.org/fileadmin/DAM/env/pp/compliance/C2010-54/Correspondence%20with%20communicant/Response%2021.06.11/frCommun21.06.11.pdf>

<sup>57</sup> <http://www.independent.ie/national-news/cowen-urged-to-intervene-in-gormley-incinerator-row-2243246.html>

In the 'All island grid study' there was absolutely no consideration of environmental objectives in this selection process, such as cost per tonne of CO<sub>2</sub> reduced. It was 'research' by the University. This fundamental issue is becoming a real problem in the scientific world at present, not least in Ireland. In the commercial world, such as engineering, one has to stand over the product. If this does not hold together on commercial grounds, quality, reliability or safety, then one is no longer considered as a viable service provider. However, for Universities there is a steady stream of politically generated commissions, with reports produced, which are ever increasingly used to justify policy decisions with massive repercussions. Yet for the University there is no apparent responsibility in this process. In the case of the generation portfolios selected by University College Dublin, they even wrote a disclaimer on the front of the report. So who is in fact responsible for its technical content and the money invested in its production and the conclusions which it draws?

Time and time again the author and others have contacted Irish Universities in relation to articles published in the general media, which are clearly false. Under the access to information regulations, as public authorities, they have to ensure that this information is transparent, as the regulations state; "accurate, up to date and comparable". Yet on request no information is forthcoming to support the statements made, it doesn't exist. Despite this, the Universities are insisting that their academics have total academic freedom, to the point of using the name of the University at will in the public arena with regard to what can only be described as statements of personal opinion.

In relation to the Electricity Research Centre in University College Dublin, they made statements in the Irish media in relation to wind energy and its cost basis, which were clearly false. When an access to information request was made for cost information on wind energy to support the statements, there was a refusal to comply with the regulations; the issue then went to appeal to the Commissioner for Environmental Information. The result of this appeal was a ruling that the College possessed no information on the impact of wind generation on electricity prices<sup>58</sup>.

Bad enough as that is within the Irish context, if we consider the UN IPCC's reports on climate change. Then it is a fact that predictions of previous climatic history have been falsified, that the models used to justify future climate trends are essentially useless, while if one comes to the third main element, then this involves the retooling of the global energy supply to one of renewables. Fritz Vahrenholt was a long time campaigner for renewable energy and managing director of Europe's largest renewable energy company, RWE Innogy. When selected to review the renewable energy section of the IPCC report<sup>59</sup>, he was so appalled at how thin the factual basis was, that he started to review the other content. The net result was that he was a co-author of a book released to significant controversy in 2012 called 'Die Kalte Sonne', 'the cold sun', which pointed out that Catastrophic Anthropogenic Climate Change (CAGW) was massively exaggerated and that natural cycles related to the sun were much more dominant. In other words, he became a committed 'sceptic' of the IPCC process.

Sadly when one reviews the IPCC chapters on wind energy and grid integration, the two key chapters in the report on renewable energy, not only are these flaws clearly

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<sup>58</sup> <http://www.ocei.gov.ie/en/DecisionsoftheCommissioner/Name.12418.en.htm>

<sup>59</sup> <http://www.spiegel.de/international/world/breaking-global-warming-taboos-i-feel-duped-on-climate-change-a-813814.html>

to be seen, in which opinions triumph factual analysis, but so too is the very significant contributions from Irish Universities. In particular the same Electricity Research Centre at University College Dublin, whose comments on the draft IPCC documentation run to over a hundred<sup>60</sup>.

So we have a serious problem, not only is there an absence of Strategic Environmental Assessment in the development of the whole renewable energy programme, but there wasn't any proper technical, economic or environmental evaluation to be seen in its development. Simply put no logic, reason or accountability. The bureaucracy has to be kept turning, of which rule number one has always been:

- “Maintain the problem at all costs! The problem is the basis of power, perks, privileges, and security”.

To this of course must be added that wealth and resources must be diverted to vested support groups and away from those, which are considered political opponents. This is how it functions, it is not pretty, but it is the reality. Neither is there any point in lobbying it or addressing it with logic. There are only two things which will stop it; either it self-implodes, as the pyramid scheme comes crashing down, such as with the recent property crash or one gets a Court order.

## 9. WHO WATCHES THE WATCHMAN?

*Quis ipsos custodes custodiet?* An old Roman saying; who watches the watchman? So what is being said in Italy today? The UNECE Aarhus Clearing House reported in October 2012<sup>61</sup>:

- “Today in Italy, less than 4% of voters say they are satisfied with the political parties as they are configured in their country. This profound disillusionment is not only Italian. In the world of representative democracy political parties are viewed with increasing distrust, contempt, and even anger. At the heart of our democracy has opened up a black hole, a separate sphere, inhabited by mostly male professionals, organized by the party elite, protected by the technical jargon and bureaucratic practices of the directors and, in very large measure, impervious to the generality of the public. It is increasingly the impression that our representatives represent only themselves, their interests, their friends and relatives. As if we were back to the eighteenth century English, when the political system has earned the epithet of "Old Corruption". (...)”

As the article then went on to point out in relation to the Aarhus Convention: “The Convention, through the institution of participation, reduces the discretion of the political and administrative choices, forcing institutions to take into account instances of participation and to argue in greater detail their own decisions”.

Voltaire famously stated: “The history of human opinions is scarcely anything more than the history of human errors”. If we let our system of governance descend to that of exploiting the currency of public opinion, then what do we expect? We will as a

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<sup>60</sup>See for instance: <http://srren.ipcc-wg3.de/report/srren-drafts-and-review/srren-review-comments-sod/sod-chapter-08>

<sup>61</sup> <http://aarhusclearinghouse.unece.org/news/1000437/?year=0>

result get the ideology and public populism we deserve. Add to that a massive bureaucratic structure based on patronage, the result will be decay, social unrest and what we see in Europe today, soaring unemployment. Dysfunctional governance produces dysfunctional outcomes.

As President Klaus of the Czech Republic has written so eloquently: “The Manmade Contribution to On-going Global Warming Is Not a Planetary Emergency<sup>62</sup>”:

- “This doctrine, as a set of beliefs, is an ideology, if not a religion. It lives independently on the science of climatology. Its disputes are not about temperature, but are part of the “conflict of ideologies”. Temperature is used and misused in these disputes. The politicians, the media and the public – misled by the very aggressive propaganda produced by the adherents of the global warming doctrine – do not see this. It is our task to help them to distinguish between what is science and what is ideology”.

So unfortunately what we have is not an environmental problem, but instead a threat our personal freedoms and democracy. The political process or our administration is not going to change its ways. If we want our personal freedoms and democratic rights we are going to have to go after them ourselves. If we don't, more and more restrictive measures and draconian costs will be inflicted on us, not to mention increasing damage to the natural environment around us. President Klaus has seen this in his 71 years in Eastern Europe, so too have those who helped craft the UNECE Aarhus Convention, many of whom also lived for decades under totalitarian ideologies. You have got to do it yourself. Fortunately, there is a legal structure now in place, which wasn't there previously behind the Iron Curtain, but it has to be used.

The Access to Justice Pillar of the Convention, Article (9), bestows the right of “access to administrative or judicial procedures to challenge acts and omissions of private persons and public authorities, which contravene provisions of its national law related to the environment”. These procedures must be fair, equitable, timely and not prohibitively expensive. In addition, the Charter of Fundamental Rights of the Lisbon Treaty make binding the Right to Good Administration and the Right to have damages made good. In areas of Community legal order, such as failures of a Member State or an institution of the EU, there is legal liability.

This is an established part of case law of the European Court, dating back over a decade to the Francovich judgement. Indeed, the EU Commission has seen it as an effective mechanism for the public to themselves enforce Community law in the Member States. They have published a specific guidance document on the case law concerning damages in relation to breaches of EU law by Member States<sup>63</sup>. In reality, it is not until the administration is found financially liable for the wonton damages it is engaged in, will reason and logic return to our present system of governance.

Finally to end where this document began, with a quote; as the last living patient of Sigmund Freud reported in the Süddeutsche Zeitung on 27th March 2009, Sigmund said to her:

*“Do not forget – to be an adult, one must dare to ask, why and how so and also express one's own opinion or opposition. If you do not do that, you will always remain a child and it will always be the others that decide over you!”*

<sup>62</sup> <http://www.klaus.cz/clanky/3165>

<sup>63</sup> [http://ec.europa.eu/eu\\_law/infringements/infringements\\_dommmages\\_en.htm](http://ec.europa.eu/eu_law/infringements/infringements_dommmages_en.htm)