The Aarhus Convention and its 6th Meeting of the Parties –
How the EU used its position to bully and block a legal ruling in International Law against it and prevent its citizens accessing their rights to challenge it

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This is a complex issue, it's not about opinions and superiority of same; it's much more fundamental to that, it is about your rights or more to be precise, your lack of rights. Does this matter? The overwhelming percentage of you will never actually exercise these rights, so it may appear to be theoretical, somebody else's problem or their 'bee in the bonnet', so move on, read instead the local speculation and gossip currently being peddled as news, etc. However, this would be a mistake; as while we often don't want to face it, a decade ago the "Tribunal of Inquiry into Certain Planning Matters and Payments (Mahon Tribunal)[1]" laid it bare:

1.01 Corruption, and in particular political corruption, is a deeply corrosive and destructive force. While frequently perceived as a victimless crime, in reality its victims are too many to be identified individually. Political corruption diverts public resources to the benefit of the few and at the expense of the many. It undermines social equality and perpetuates unfairness. Corruption in public office is a fundamental breach of public trust and inherently incompatible with the democratic nature of the State.

This hasn't gone away, if our planning system for example had functioned within a 'transparent and fair framework', as it is legally required to, would we have ended up in the situation with 'ghosts estates' around the country in the hands of NAMA or a massive wind energy programme being implemented, for which no cost benefit analysis, consideration of alternatives or environmental assessment ever existed?

Does the obvious not jump out, as to where the hell are the checks and balances? Instead we have slow moving train wrecks, which keep repeating themselves, as citizens cannot intervene or more to the point, they are ruthlessly prevented from intervening. Is Ireland corrupt? At the lower and middle levels, Ireland is very functional, one most certainly does not have to 'tip' officials, as regretfully happens in other places. However, peer into the upper strata of a country, whose 'division of powers'[2] systematically concentrates decision making into the hands of the few in Central Government, then is it no surprise that the obvious happens. If you are in a position to make decisions over others, then you will most likely do so in a manner which favours yourself and those who support you – and that is the starting point.

Ireland is also regretfully an example of what is considered a 'weak democracy', where citizens **only** get to vote in choosing representatives every five years or so. Civil society in Ireland is not without considerable talents, as the manner in which it can generate considerable revenue to continuously feed an ever demanding State apparatus demonstrates. However, that same State apparatus systematically excludes that civil society from its decision making in the intervening five years between elections. Even worse it also systematically excludes those elected

[1] https://planningtribunal.ie/reports/the-final-report/

[2] See for example information on a number of countries in addition to Ireland, such as Sweden, Albania, etc.: https://portal.cor.europa.eu/divisionpowers/Pages/default.aspx

representatives at local level from any effective involvement in central decision making, in effect castrating local democracy and its input[3].

How did we get to that position? It is true of course that "*in a democracy you get what you put into it*", but it is also true that when one spends significant time abroad, one tends to adapt to different cultures and starts to recognise some of the inherent flaws in one's own culture. For example, Irish culture is dominated by a pathological obsession with being nice[4], so it wasn't surprising that Jean Kennedy Smith, a former US ambassador, put it when she returned to the States; "*the Irish lack a proper sense of outrage*".

We are then often paralysed when something 'not nice' happens. The Irish Catholic Church was for decades unable to deal with the not insignificant level of child abuse occurring within its ranks. They weren't alone in this type of failures. In Iceland they were not only out banging pans in the streets and pissing on the pictures of bankers installed in the men's urinals[5], but also well capable of jailing over thirty of them. In Ireland effectively none of the bankers has gone to jail. In Japan would the State bank regulator, who had failed his people so miserably, have as a consequence committed a form of 'hara-kiri'? In Ireland the regulator just walked off into retirement with a big lump sum and never apologised, which for him was no doubt well and good, as he was fully confident that he had been and continues to be 'nice' to those around him.

Culturally we do not seem to have reached the point, unlike most of the rest of the world, that responsibilities to others goes far deeper than just being 'nice' and that if you do step out of line, there will be others to put you back in to line. Many Irish now realise that the propaganda beaten into them 'that the Brits did it', is actually small fry in comparison to the destructive powers of their own State, while equally the overwhelming percentage of Irish people are convinced that the EU is essential 'to keep manners' on the Irish State apparatus.

In the past I had the rewarding experience of more than a dozen years on EU technical aid projects in Central and Eastern Europe helping to implement the environmental legislation[6] as part of the accession process. Memories there were still fresh of recent raw experiences, so when the work on training regulators and industry was expanded to public groups, it wasn't then surprising to be asked from the back of a public meeting as; "*to why was it any different now that the man in Brussels decided, as to when the man in Moscow decided?".* Equally one could ask, as to how was the EU going to put some manners on the Irish State apparatus, as the answers to both are intrinsically linked.

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[3] The official position summarised for Ireland in this regard is not just a disgrace, it is also downright condensing in the manner in which it shows there is no effective multi-level governance:
https://portal.cor.europa.eu/divisionpowers/Pages/Ireland-MLG.aspx

[4] For example: Fr Ted and Mrs Doyle paying for the tea! Many point out that this behaviour can be traced back to the Brehon Laws where: "*Whoever comes to your door you must feed him and care for him with no questions asked"* https://www.irishcentral.com/roots/irelands-brehon-laws-were-before-their-time-100680164-237762681

[5] http://bigthink.com/ideafeed/iceland-is-doing-what-the-us-doesnt-have-the-gall-to-do-jailing-bankers

[6] Primarily legislation on Industrial Pollution Control and Control of Major Accident Hazards

A functional democracy has a 'separation of powers', the typical division being three branches: a legislature, an executive, and a judiciary. This division of responsibilities is to limit any one branch from exercising the core functions of another. The intent is to prevent the concentration of power and provide for checks and balances. The United Nations Economic Commission for Europe (UNECE) goes on to explain in relation to "*Environmental democracy: your environment, your rights":*[7]

"Imagine getting together with your neighbours to design a network of cycle paths that would improve everyday life in your city – sounds good doesn't it? Or imagine the simple fact of being kept informed of plans for a new motorway near your home. Or what if your water supply became unsafe to drink due to pesticides used for farming – wouldn't you want to be sure that appropriate action was taken to put things right?"

As it goes on to explain, the Aarhus Convention or to give it its full name, the Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters is a UN Treaty and part of EU legal order, which sets out our rights, and imposes clear rules for governments and public authorities to help ensure that our environment is protected. Specifically, the Convention covers three core areas – the right to information on environmental issues, the right to participate in shaping decisions that affect your environment, and the right to justice if these rights are not respected. Together, these rights make up the idea of "environmental democracy".

In Ireland if you have a problem with the administration, officials will be 'nice', but do absolutely nothing to resolve the issue. You can contact political representatives, who will be equally 'nice' and even do some blustering for you, but nothing will get done. Equally in the private sector, if somebody doesn't pay your bills, you can have 'nice' conversations, but it is in the 'lap of the gods', as to if you actually get paid. In Germany if you don't pay your bills, they come after you with official debt collectors, Court orders, etc. Nothing personal, it's just business and equally they have bills to pay.

Volkmar Klohn is a German national with a small organic farm in Sligo; An Bord Pleanala approved a nearby 'processing facility' for dead, i.e. diseased, animals. Volkmar presumably thought that the Irish legal system was similar to at home, so he took a legal challenge, as there were genuine deficiencies in the Environmental Impact Assessment procedure. European courts will scrutinise the substance or merits of the decision making, a requirement of the UNECE Convention and supporting EU law. In Ireland, the *O'Keefe* standard applies in which the judiciary will only look at matters of substance, where you have first demonstrated that the Government official(s) behaved so irrationally, that it defied 'common sense'.

Not unsurprising as a result, Volkmar's endeavours in the Irish High Court were unsuccessful and he was then slapped with €86,000 of An Bord Pleanala's costs. Subsequently through many years of hard work as a lay litigant, Volkmar has progressed through the Supreme Court to an on-going referral of this cost award to the European Court of Justice (ECJ).[8] Why? Because the Convention and its implementing EU law also gives one the right to a legal challenge in a manner, which is "*fair, equitable, timely and not prohibitively expensive*".

[7] https://www.unece.org/protect_your_environment

[8] http://curia.europa.eu/juris/liste.jsf?language=en&num=C-167/17

So why the hell is the EU Commission not sorting this out or Irish citizens, who are also meant to enjoy rights as EU citizens, able to take a case against Ireland at the European Court? Not least as Ireland at so many levels and most particularly its justice system, is a complete and utter staggering farce, when it comes to 'environmental democracy'?

The EU Commission is under EU law the 'Guardian of the Treaties', which means that it is meant to enforce EU law, but it also under that same EU law has absolute discretion on what it enforces. It is also a political animal, which as many people are starting to realise, doesn't appear to be accountable to anybody. As others have eloquently documented[9], long before I got involved in this area, environmental enforcement and politics are intrinsically linked in which the 'rule of law' accounts for little, if it is not enforced. Furthermore, the EU and its Member States share 'joint competency' in the field of the environment, so there is little in the field of our environmental legislation, which is not derived from Community legal order. Plus as Einstein put it, "*the environment is everything that is not me*".

So if the EU Commission has no appetite to challenge the deficiencies in the Irish judicial system, which makes a farce of our rights under 'environmental democracy', why then can't we as citizens take the State to the European Court of Justice? The answer is simple, citizens or citizen groups, such as Non-Governmental Organisations (NGOs), are not allowed into the European Court. If you are a commercial business, you can get in the door, but as a citizen you have some limited rights to challenge the EU for not releasing documents to you, but that is as far as it goes, the door is otherwise firmly closed.

Is this breeding abuses and corruption? For example, more than a thousand billion Euros has now been invested in the EU in wind farm and solar infrastructure. Why, not least as the carbon savings generated could have been achieved for less than 5% of the cost and we have no factual analysis, as to why these savings are required in the first place?[10] For the 20% by 2020 renewable Directive (2009/28/EC), in the space of less than a year National Renewable Energy Action Plans were rushed through by the Member States and adopted in June 2010. It was clear to me at the time that the manner, in which this was occurring, was a complete abuse of the Convention and associated EU law, but I was powerless to take it into the Irish High Court, as there was no cost protection available which covered such a breach of law. The bottom line I would have found myself in the same position as Volkmar Klohn.

UNECE has a compliance mechanism for the Aarhus Convention, which is unique in that the public can under certain conditions submit 'communications', which lead to a an investigation by the Compliance Committee, a panel of experienced International lawyers[11]. Ireland was the only Member State, which had not ratified the UNECE Aarhus Convention, so was not subjected to its compliance mechanisms, but the EU had ratified in 2005. As I had also documented the refusal of the EU Commission to

[9] See for example the "Politics of Environmental enforcement: Policing the European Commission" by Andrew Jackson of TCD: https://www.ucc.ie/law/LawAndEnviromentConference2010/Andrew%20Jackson%20-%20The%20Politics%20of%20Environmental%20Enforcement%20-%20FINAL.pdf

[10] Further detailed analysis in: https://www.wind-watch.org/documents/clean-energy-what-is-it-and-what-are-we-paying-for/

[11] https://www.unece.org/environmental-policy/conventions/public-participation/aarhus-convention/tfwg/envppcc/aarhuscc-members.html

enforce the Aarhus rights in Ireland, a Communication (C-54) was accepted against the EU. This led in 2012 to findings and recommendations against the EU, in that in adopting these National Renewable Energy Action Plans (NREAPs) it had failed to provide the public with the necessary information and an opportunity to participate in the decision making. Furthermore, it had not taken the necessary enforcement measures against Ireland.

To explain, public participation means that you have an opportunity to genuinely influence the decision making, not least as 'options are open'. Consultation on the other hand is just a sham, it's only them telling you what they are going to do, in other words its part of diktat not democracy. For plans and programmes related to the environment, Article 7 of the Convention applies and this requires Parties to ensure that the arrangements for public participation are transparent and fair and that within these arrangements the necessary information is provided to the public. Reasonable time frames are required to allow sufficient time for informing the public and for the public to prepare and participate effectively, in addition to requirements for early public participation when all options are open and ensuring that due account is taken of the outcome of the public participation.

The Aarhus Convention has a Meeting of the Parties (MoP), which is a Treaty convention, which takes place every three years, the Parties now comprising 46 countries in Europe and Central Asia and the EU. Traditionally the Parties endorse by consensus with almost no change the relevant findings and recommendations of the Compliance Committee. These then become Decisions of Non-Compliance in International Law and are then part of the legal interpretation of the Aarhus Convention[12]. At the June 2014 Meeting of the Parties in Maastricht, a Decision V/9g of non-compliance[13] was adopted based on the endorsed findings and recommendations on C-54, i.e. the legal failings with respect to the EU's renewable programme.

- *1. Endorses the following findings of the Committee with regard to communication ACCC/C/2010/54:*
- *(a) That the Party concerned, by not having in place a proper regulatory framework and/or clear instructions to implement article 7 of the Convention with respect to the adoption of National Renewable Energy Action Plans (NREAPs) by its member States on the basis of Directive 2009/28/EC, has failed to comply with article 7 of the Convention;*
- *(b) That the Party concerned, by not having properly monitored the implementation by Ireland of article 7 of the Convention in the adoption of Ireland's NREAP, has also failed to comply with article 7 of the Convention;*
- *(c) That the Party concerned, by not having in place a proper regulatory framework and/or clear instructions to implement and proper measures to enforce article 7 of the Convention with respect to the adoption of NREAPs by its member States on the basis of Directive 2009/28/EC, has failed to comply also with article 3, paragraph 1, of the Convention;*

[12] See Article 31 of the Vienna Convention on the law of treaties: https://treaties.un.org/doc/publication/unts/volume%201155/volume-1155-i-18232-english.pdf

[13] https://www.unece.org/fileadmin/DAM/env/pp/mop5/Documents/Post_session_docs/Decision_excerpts_in_English/Decision_V_9g_on_compliance_by_the_European_Union.pdf

To put this into a legal context, given that the EU had previously declared to UNECE the status of the Convention in Community law, which is posted on the UNECE website:[14]

- *Such agreements take precedence over legal acts adopted under the EC Treaty (secondary Community law). So if there was a conflict between a Directive and a Convention, such as the Aarhus Convention, all Community or Member State administrative or judicial bodies would have to apply the provision of the Convention and derogate from the secondary law provision.*

There is a defined hierarchy in EU Law, as confirmed by multiple judgements in the European Court of Justice. At the top is the Lisbon Treaty between the EU and its Member States; at the next level is International Treaties the EU has ratified, such as the Aarhus Convention, while beneath these are the secondary law provisions, such as Directives, Regulations, Decisions, etc. In essence, the 20% by 2020 renewable Directive 2009/28/EC was legally flawed, as it had bypassed the public participation requirements of the overarching Aarhus Convention. Because of this conflict, the EU and its Member States should have derogated from its implementation until such time as the necessary public participation measures were first implemented. After all the environment of Ireland doesn't belong to bureaucrats in Brussels to plaster it with wind turbines, it belongs to the people of Ireland and they have to be given robust procedural rights in any such decision making.

International Law is about diplomacy, essentially 'peer pressure' is applied and there is no enforcement mechanism, such as the police or an army. Over the three year period until the next Meeting of the Parties in September 2017 in Montenegro, the EU regretfully did nothing to comply with Decision V/9g and the legal failings of these NREAPs, which were continued to be implemented.[15] However, such a breach of the Aarhus Convention was also a breach of Community law and the question was could it be enforced by a citizen?

Ireland finally ratified the Aarhus Convention in 2012 and in November 2012, a month after Ireland's ratification took effect, I initiated a judicial review of the NREAP in the Irish High Court. This turned out to be a complete farce extending over three years and nine months before any written judgement was obtained.[16] The first judge walked off the job after several days of the hearing, the second took nearly a year and a half to write his judgement, in that he didn't have to decide. As the State's senior consul, an ex-attorney general repeatedly summed it up: *"If the State so chooses to breach its international treaty obligations, then the citizen can complain about it, but that is all the citizen can do".*

This requires some additional explaining, in that the case was never about whether there was a legal breach in relation to the NREAPs, that already having been decided, but as to whether I could enforce it. One could argue that I should have taken it into the High Court in 2010, when the NREAP was adopted, as one would

[14] See download from 21.11.2017:
https://www.unece.org/env/pp/compliance/Compliancecommittee/17TableEC.html

[15] See report of Compliance Committee to 6th MoP:
https://www.unece.org/fileadmin/DAM/env/pp/mop6/English/ECE_MP.PP_2017_39_E.pdf

[16] Swords -v- Minister for Communications, Energy and Natural Resources & ors [2016] IEHC 503:
http://www.courts.ie/Judgments.nsf/0/4B8AEDC42AE79B298025801B003E70D6

'normally do' with respect to established Court rules, but there was no cost protection and I would have faced enormous bills, just like Volkmar Klohn.

In ratifying the Aarhus Convention in 2005, the EU had also adopted an amended Environmental Impact Assessment Directive, which specified the Aarhus access to justice provisions of "*fair, equitable, timely and not prohibitively expensive*". However, the wider access to justice provisions related to the 'national law on the environment' was the subject of a draft Directive on access to justice, which was never adopted as certain Member States objected to it. Hence, in ratifying the Convention in 2005, the EU declared that with respect to the wider access to justice provisions, Article 9(3) of the Convention, *"its Member States are responsible for the performance of these obligations".*

But Ireland never ratified until 2012 and when it did so, it did not transpose the Convention into Irish law, but just amended and tweaked certain legal acts, leaving out many key provisions, such as the proper transposition of Article 9(3) of the Convention. This is a cynical position often adopted by the Irish State, in that Article 29.6 of the Constitution provides that:

- *"No international agreement shall be part of the domestic law of the State save as may be determined by the Oireachtas".*

Hence the position of the State's senior counsel. So essentially my case was like the chicken and egg. To explain, in two Aarhus related cases at the European Court of Justice, the Advocate Generals have explained:[17]

- *"The fish cannot go to court".*

- *"The environment cannot defend itself before a court, but needs to be represented, for example by active citizens or nongovernmental organisations".*

In such a public rights case, the citizen cannot be bullied out of the Courts by threats of huge financial costs awarded against him or her. Note: To initiate a Court case, as I did, one first has to get 'leave', which is where the substance of the case is screened by a judge, to determine if it has merit or not for a subsequent hearing. So how could I be out of time in 2012, when in 2010 the Irish Courts had no measures to recognise my right to 'cost protection' and Ireland had not ratified or assumed those responsibilities in International Law, i.e. I had no legal rights to take the case? Sadly, all through the three years and nine months I was in the Irish High Court, the Irish Courts refused to recognise my rights to 'cost protection' and provide for the same, as it had not been prescribed by the Oireachtas. This issue was considered irrelevant by the deciding judge despite clear direction on this matter having been given to the National Courts by the European Court of Justice in March 2011:[18]

- *Therefore, if the effective protection of EU environmental law is not to be undermined, it is inconceivable that Article 9(3) of the Aarhus Convention be interpreted in such a way as to make it in practice impossible or excessively difficult to exercise rights conferred by EU law.*

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[17] http://ec.europa.eu/environment/legal/law/3/3_training_materials/pdf/Aarhus_Convention_and_the_EU_Latest_developements.pdf

[18] Case 240/09: http://curia.europa.eu/juris/document/document.jsf?docid=80235&doclang=EN

My case was therefore one which the Judge should have referred to the European Court, but he refused to do so, as the political fallout in respects to the validity of the NREAPs would have been too high. Although shortly afterwards a referral was made by another Irish High Court Judge in relation to Article 9(3)[19], which just goes to show how inconsistent and politicised Irish Courts are.

However, the ongoing failings of the National Courts to provide access to justice to European Citizens wishing to challenge matters of EU law, was a position the Compliance Committee also ruled on in March 2017 in relation to Communication ACCC/C/2008/32 (Part II). In essence the EU was in breach of its obligations by not providing its citizens with direct access to the European Court of Justice. As a result, *"Draft decision VI/8f concerning compliance by the European Union with its obligations under the Convention"*[20] was prepared for adoption at the 6th Meeting of the Parties in September 2017. The first part of this was the on-going non-compliances with respect to Decision V/9g and the manner in which the NREAPs were adopted in breach of the Convention, while the second part related to endorsement of the findings on Communication ACCC/C/2008/32 (Part II) in that the EU had failed to provide its citizens with effective access to justice.

What happened next was unprecedented, in that the EU Commission adopted on the 29th June 2017 a *"Proposal for a Council Decision on the position to be adopted, on behalf of the European Union, at the sixth session of the Meeting of the Parties to the Aarhus Convention regarding compliance case ACCC/C/2008/32".*[21] This clarified:

- *The Meeting of the Parties generally decides by consensus. If all efforts to reach consensus have been exhausted, decisions on substantive matters are taken by a three-fourth majority vote of the Parties present and voting.*

It then stated in its Article 1:

- *The position to be taken by the Union at the sixth session of the Meeting of the Parties to the Aarhus Convention regarding compliance case ACCC/C/2008/32 is as follows: –negative vote on the endorsement of the findings.*

To explain the role of the Council of the European Union:[22]

- *The Council of the EU is the institution representing the member states' governments. Also known informally as the EU Council, it is where national ministers from each EU country meet to adopt laws and coordinate policies.*

- *The Council is required to vote unanimously to diverge from the Commission proposal when the Commission is unable to agree to the amendments made to its proposal*

[19] C-470/16 - North East Pylon Pressure Campaign and Sheehy: http://curia.europa.eu/juris/liste.jsf?language=en&num=C-470/16

[20] https://www.unece.org/fileadmin/DAM/env/pp/mop6/English/ECE_MP.PP_2017_25_E.pdf

[21] http://eur-lex.europa.eu/legal-content/EN/ALL/?uri=COM:2017:0366:FIN

[22] http://www.consilium.europa.eu/en/council-eu/voting-system/unanimity/

The EU Commission's responsibilities include:

- *Represents the EU internationally*
- *Speaks on behalf of all EU countries in international bodies, in particular in areas of trade policy and humanitarian aid.*
- *Negotiates international agreements for the EU.*

To deviate from the EU Commission's proposal, unanimous agreement is required by the Council of Ministers, where *"unanimity requires everyone to agree or abstain from voting".*[23]

As the Compliance Committee then went on to point out with respect to this draft Council Decision, they were not in a position to provide special treatment to the EU[24] and as per Article 27 of the Vienna treaty:

- *"A party may not invoke the provisions of its internal law as justification for its failure to perform a treaty. …".*

As it turned out some, but not all of this Draft Council Decision was modified by the Council, who published their 'Council Decision (EU) 2017/1346 of 17 July 2017 on the position to be adopted, on behalf of the European Union, at the sixth session of the Meeting of the Parties to the Aarhus Convention as regards compliance case ACCC/C/2008/32':[25] While this accepted draft Decision VI/8f, it sought to water it down considerably, primarily in the it would not be 'endorsed', but only taken 'taken note of' by the subsequent Meeting of the Parties. This may seem like a small matter of wording, but an 'endorsed' decision is a decision in International law, that subsequently one could then seek to challenge in a Court, such as by trying a test case in the European Court of Justice itself.

At the Meeting of the Parties on the 11th September 2017, the Chairwoman from UNECE on opening the discussion on the draft decision on non-compliance against the EU highlighted the following:

- *Fair and equal treatment for all parties, EU can't expect special treatment.*
- *What are the reasons for EU's changes to draft decision of non-compliance, as none provided?*

The Chair of Aarhus Convention Compliance Committee went on to point out:

- *Dangerous consequences for the future of the convention and its compliance mechanisms if EU's proposed amendments adopted. A Party cannot rely on*

[23] http://www.consilium.europa.eu/en/council-eu/voting-system/unanimity/

[24] https://www.unece.org/fileadmin/DAM/env/pp/compliance/CC-57/ACCC_statement_on_Commission_proposal_on_C32_30.06.2017.pdf

[25] https://www.unece.org/fileadmin/DAM/env/pp/mop6/Statements_and_Comments/Council_Decision__EU__2017_1346.pdf

failings within its own legal order to opt out of commitments in International Legal Order (Article 27 of the Vienna Treaty). [26]

- *EU has provided no legal argument which counters the findings.*

- *The Aarhus Convention Compliance Committee is not dictating to the EU specific measures of compliance, all Parties are open to come up with own solutions to achieve compliance. The Compliance Committee is not dictating that EU Treaty needs to be changed as EU now suggesting.*

The Curator of the Compliance Committee on Case C-32(Part II) also pointed out:

- *That the Parties should 'endorse' the findings, rather than EU's proposed amendment to change the word "endorse" to "take note of", unless Meeting of Parties can identify a specific legal flaw in the findings, as it would challenge the entire effectiveness of the compliance mechanism.*

- *Is there a defence for failing to comply with Article 9(3)? The EU when ratifying excluded certain aspects in this ratification. However, the EU didn't exclude Article 9(3) as it applied to the EU institutions. Principle established as long ago as 1872, adopted as part of International Law (led to Vienna Convention) that defence of relying on domestic legal order to exclude from obligations under International Law is not acceptable.*

Repeated interventions where then made by Norway and Switzerland in commenting on each section, both making it clear that special treatment could not be allowed in the compliance mechanism and the repeated failures by the EU to provide a legal justification for their amendments to the draft findings. As Norway and Switzerland also highlighted, the draft decision does not specifically dictate to the EU the measures the EU has to take, but rather that measures have to be taken to achieve a result. Both failed to see the EU's position.

As no consensus was reached, the UNECE Chairwoman then outlined the options for Decision-making:

(1) EU to withdraw its position in order to achieve consensus on MoP draft decision of non-compliance. This was rejected by EU as their formal position was documented in the Council Decision as submitted to UNECE; no change will occur.

(2) Parties to continue discussions in a closed late session that night and possibly even the next day in an attempt to reach a decision. Norway agreed to this, so did Switzerland. No other Party objected.

Unfortunately no agreement could be reached in that closed session and the following day the text below was adopted in the formal list of key decisions and outcomes:

1. With regard to draft decision VI/8 (f) on compliance by European Union (ECE/MP.PP/2017/25), the Meeting of the Parties agreed to include the following text in the report of its sixth session:

[26] https://treaties.un.org/doc/publication/unts/volume%201155/volume-1155-i-18232-english.pdf

- *"In the spirit of reaching the consensus, considering exceptional circumstances, the Meeting of the Parties decided by consensus to postpone the decision-making on draft decision VI/8f concerning the European Union to the next ordinary session of the Meeting of the Parties to be held in 2021. The European Union recalled its willingness to continue exploring ways and means to comply with the Convention in a way that is compatible with the fundamental principles of the Union legal order and with its system of judicial review."*

- *The Meeting of the Parties also requested the Committee to review any developments that have taken place regarding the matter, and to report to the Meeting of the Parties accordingly. In this context, the Party concerned stated that it reaffirms its commitment to implement decision V/9g.*

- *In this regard, the Meeting of the Parties:*

    - *Took note of the statements by Norway and Switzerland and of their requests to reflect their positions in the meeting report.*

    - *Took note of the request by Belarus to explicitly indicate in the meeting report the "exceptional circumstances".*

What was witnessed at and in the build-up to the 6th Meeting of the Parties was an unaccountable, unelected bureaucracy abusing the rule of law, both at EU and International level, to ensure it could not be called to account, by an adequate 'separation of powers', in which EU citizens had effective rights to justice. Neither is it acceptable as an EU citizen, to sit powerless in an international forum, and have to listen to the representatives of other States, namely Norway and Switzerland, stand up for your rights and prevent abuses of International Law occurring by what is supposed to the administration, which represents you and your interests.

So where is this going? The EU Commission bullied this renewable programme through, knowing fully well that it was in breach of the Convention and associated rights of the citizens. It then refused to comply with the compliance proceedings in International law against it, knowing fully well that citizens had no effective measure to take enforcement measures against it. One has ultimately to seriously question what the EU actually is. As far as the Aarhus Convention and International Law is concerned it is a Regional Economic Integration Organisation, which is not a country, although it has "*obligations to the extent that it has European Union law in force*".[27] If the EU was indeed solely limited to regional economic integration, than one could accept this, as ultimately free trade cannot be a race to the bottom and is inherently linked to common minimum standards, such as in terms of safety and environmental protection.

However, the EU's remit now extends way beyond what are matters connected with free trade. In the field of the environment alone there are more than 300 Directives and Regulations. For example, as part of the EU's enlargement process, a *"Handbook on the implementation of EU environmental legislation"* has been prepared and is available as a free download[28]. This guidance runs to more than 1,600 pages, demonstrating the breath and complexity of this subject matter, which

[27] https://www.unece.org/fileadmin/DAM/env/pp/compliance/CC-58/ece.mp.pp.c.1.2017.21_aec.pdf
[28] http://bookshop.europa.eu/en/handbook-on-the-implementation-of-eu-environmental-legislation-pbKH0616004/

like it or not has considerable impact on our day to day lives. Yet we have no effective check and balance with respect to access to justice to challenge the EU administration on this.

The founding fathers of the United States in 1776 put in a Constitution, which has served that country well since then, in particular as to how it addressed both the 'division of powers' and the 'separation of powers'. As is widely recognised in the US:[29]

- *"Separation of powers serves several goals. Separation prevents concentration of power (seen as the root of tyranny) and provides each branch with weapons to fight off encroachment by the other two branches"*.

Do we have a Federal States of Europe? At the Meeting of the Parties it was embarrassingly obvious that a Member State only spoke when a specific issue, such as in relation to compliance, was directed at itself alone. Otherwise, the Member State representatives never spoke, but were corralled into a special room with the EU Commission whenever there was a break; the so called EU coordination centre. The EU Commission being the only one, which was entitled to speak on their behalf at the Meeting of the Parties, an International legal forum. So much for democracy and the importance of diversity of opinion!

Is the EU corrupt? The 'cash for ash' scandal in Northern Ireland, in relation to renewable heat subsidies, has cost the taxpayer there several hundred million pounds and has led directly to the fall of the executive there. However, right throughout the EU, why did we need these renewable subsidies in the first place, which are forms of State Aid for Environmental Protection? There was no environmental information prepared to justify the NREAPs, such as in relation to costs, benefits, alternatives and uncertainties. Neither was there any environmental information generated to support the decision making on these subsidies. The principle of proportionality being ignored, which is referenced time and time again in judgements of the European Court in that *"measures adopted must not exceed the limits of what is appropriate and necessary in order to attain the objectives legitimately pursued by the legislation in question; when there is a choice of means between several appropriate measures recourse must be had to the least onerous, and the disadvantages caused must not be disproportionate to the aims pursued".*

So some developers with what were perceived to be trendy generation units got enormous subsidies, while others, which were less trendy, effectively got put out of that business and all the while there was no information available to support that decision making. So as the Mahon Tribunal put it, corruption is not a victimless crime and "*political corruption diverts public resources to the benefit of the few and at the expense of the many*". So yes, the EU Commission is a corrupt organisation, not least as it does not follow its own rules, that being the rule of law. Indeed, in this regard, John Adams, who was one of the founding fathers and 2nd President of the United States put it so well: *"A Government of Laws, and Not of Men".* Disputes and differences will always arise, but if we cannot rely on our laws to resolve them, as we cannot access the Courts to do so, then we are in big trouble. Therefore we are in big trouble, as we have effectively lost control of decisions around us and are being increasingly dictated to by an abusive and dictatorial EU Commission, which has put itself above its own laws and is ruthlessly determined that we will not call it to account.

[29] http://law2.umkc.edu/faculty/projects/ftrials/conlaw/separationofpowers.htm